

EXHIBIT 250

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

STATE OF ARIZONA,
By and through its Attorney General
Mark Brnovich, et al.

Plaintiffs

vs.

MERRICK GARLAND, in his
official capacity as Attorney
General of the United States,
et al.

Defendants

The Teams teleconferenced deposition of
RODNEY SCOTT was held on Tuesday, December 5, 2023,
commencing at 10:11 A.M., at virtual location before
Louisa B. McIntire-Brooks, Notary Public.

Job No. CS6342615

REPORTED BY: Louisa B. McIntire-Brooks

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1 STIPULATION

2 It is stipulated and agreed by and
3 between counsel for the respective parties that the
4 witness may be remotely sworn.

5 PROCEEDINGS

6 Whereupon,

7 RODNEY SCOTT,

8 called as a witness, having been first duly sworn
9 to tell the truth, the whole truth, and nothing but the
10 truth, was examined and testified as follows:

11 EXAMINATION BY MS. FUDIM:

12 Q. Good morning, Chief Scott. I'm going to be
13 asking you some questions today at this deposition
14 which we're holding virtually. First question I have
15 for you, have you ever had your deposition taken
16 before?

17 A. Yes, I have.

18 Q. When was the last time?

19 A. Probably August, the week of maybe
20 August 10th, 2021, it was just before I retired as
21 Chief of the Border Patrol.

1 Q. So I'm going to go over some ground rules
2 with you. This may sound familiar to you based on your
3 experience having done this before, perhaps your
4 attorney has gone over with you, but in this case I
5 think repetition won't be a bad thing. So I'm going to
6 be asking you questions and I'm going to ask that you
7 give verbal answers to those questions. I say that
8 only because sometimes people will nod or shake their
9 head and there is a court reporter here and she's not
10 going to be able to take that down. So please give
11 verbal answers to all my questions. Okay?

12 A. Understood.

13 Q. If there is a question that I ask that you
14 don't understand, please let me know that you don't
15 understand and that could be either because you can't
16 hear me properly or because what I'm saying makes no
17 sense. I won't take offense. Just let me know you
18 don't understand the question and I'll be happy to
19 rephrase. Okay?

20 A. Yes, understood.

21 Q. Now, we also can't talk over each other

1 because of the presence of the court reporter and
2 particularly because we're doing this remotely. So,
3 even if you know where I am going with the end of my
4 question, please let me finish asking the question so
5 that you can get an answer, and by the same token, I'm
6 obviously going to allow you to finish providing an
7 answer. Okay?

8 A. Yes, understood.

9 Q. If you answer a question and later on in
10 the deposition something occurs to you, that your prior
11 answer was incomplete, it was wrong, you want to
12 correct something you said earlier, you have an
13 epiphany you want to share, just let me know. I would
14 rather it be out of order than us to have something on
15 the record that you believe is incorrect. Okay?

16 A. Yes, understood.

17 Q. If you want to take a break at any point in
18 time, that's fine, just let me know and we'll take a
19 break. I think that's all my general instructions for
20 you. Does that all make sense to you?

21 A. Yes, it does. Thank you.

1 Q. One more I will add is that I'm going to be
2 asking you questions and there may be questions I ask
3 you that you don't know the answer to. That's fine.
4 You can just let me know that you don't know the answer
5 and we will move on. I'm not looking for you to guess.
6 So, if you don't know, you don't have to make up an
7 answer, you can just tell me you don't know and we'll
8 move onto a different area of questioning. Okay?

9 A. Yes, understood.

10 Q. I see that sitting to your right, my left,
11 is Andrew Block. Is he your counsel here today?

12 A. Yes, he is.

13 Q. Have you had a chance to meet with him
14 prior to this deposition?

15 A. Yes, I did.

16 Q. Do you feel comfortable that you're able to
17 give accurate and complete testimony here today as a
18 result of meeting with your counsel?

19 A. Yes, I am.

20 Q. When did you meet with Mr. Block?

21 A. Yesterday.

1 Q. How long did you meet with him?

2 A. Maybe an hour, hour and a half.

3 Q. How did you first become familiar with this
4 lawsuit?

5 A. General awareness from the public and then
6 specifically I was contacted by Scott. I believe my
7 name was referred to him by one of the other witnesses.

8 Q. By Scott, are you referring to Scott
9 St. John, counsel for the State of Louisiana?

10 A. Yes, I am.

11 Q. When was it that you were contacted by him?

12 A. I do not remember the date, but it's been a
13 couple months probably. At least a month.

14 Q. What was the nature of that conversation
15 that you had?

16 A. Identifying my work experience, any
17 involvement that I had with what is commonly referred
18 to as the Asylum Officer Rule and just my general
19 background in border security immigration.

20 Q. How long was that conversation?

21 A. Probably the initial conversation, probably

1 every conversation no more than five minutes. They
2 have been on phone only. And then I was usually
3 between meetings just -- I don't think we have ever had
4 a conversation longer than ten minutes.

5 Q. How many conversations have you had?

6 A. I do not remember that either. I would say
7 between three to six, maybe. And the reason I say that
8 is it was -- the dates were changing from when we could
9 possibly be -- there was a couple of different
10 engagements there, one via text, I think, but most were
11 verbal.

12 Q. What is your understanding of the claims in
13 this case?

14 A. I believe the claims in this case, and
15 again, from my perspective, is that it was not properly
16 adjudicated, if you will. I'm not testifying to how
17 every step of the process went. My piece of it is the
18 border patrol's involvement or questions about the rule
19 and how it was developed and if border control was
20 involved or not.

21 Q. When you say it was not properly

1 adjudicated, what is the it that you're referring to?

2 A. The asylum rule. The new rule that we're
3 not in the Federal Register, if you will, it was
4 ultimately implemented allowing asylum officers to
5 adjudicate the entire asylum claim as opposed to the
6 historic perspective which is where an immigration
7 judge would adjudicate the claim.

8 Q. When you say it wasn't properly
9 adjudicated, what do you mean by that?

10 A. I was alluding to the allegations in the
11 case and if all the people that should have been asked
12 in the federal government and outside were asked,
13 there's certain processes and procedures with a notice
14 of record, basically what are the implications of the
15 rule, very, very administrative and a lot of that is
16 the legal aspects. My understanding is that people, to
17 include the state of Louisiana in this case, do not
18 believe that all those steps that should have taken
19 place did.

20 Q. Did you review the complaint at any point
21 in time?

1 A. I have not reviewed the entire complaint,
2 no.

3 Q. Have you reviewed portions of it?

4 A. I have had access to it and I skimmed over
5 some of the complaint, yes. But I don't really
6 remember verbiage per se.

7 Q. When was that?

8 A. Within the last month. Probably last two
9 months. Right after Scott St. John reached out to me.
10 I did some cursory Open-source public research. So I
11 don't know that it was the actual complaint either or
12 just excerpts. I believe it was just excerpts of the
13 complaint.

14 Q. Do you know whether it was excerpts of the
15 first complaint or the amended complaint?

16 A. I do not know.

17 Q. Are you aware that you have been disclosed
18 as a non-retained expert in this case?

19 A. Yes.

20 Q. What is your understanding of your role in
21 this litigation, if any, going forward?

1 A. My role would be to just testify to my
2 involvement or lack thereof while serving as chief of
3 the United States border patrol in any deliberations or
4 discussions about this new rule and the implications
5 that it would have on border security and specifically
6 border patrol's mission and workload.

7 Q. When you say testify, are you referring to
8 at a potential trial or something else?

9 A. At a potential trial, that's what I was
10 asked if I was willing to do.

11 Q. Were you ever asked if you would be willing
12 to provide a declaration in support of any potential
13 motion filed in this case?

14 A. I believe that may have come up initially.
15 But to date, I have not taken action on that. I have
16 not submitted a declaration.

17 Q. In the event of your potential testimony in
18 a trial in this matter, have you discussed with
19 plaintiff's counsel charging them for your time for
20 testifying at a trial?

21 A. We have not had that discussion. When I

1 was asked to do this deposition, I brought up the fact
2 that -- when I was asked about doing this deposition,
3 Scott St. John indicated that the governor wanted a
4 full eight hour day. So I did bring up with him at
5 that point in time that that means I'm not going to be
6 able to make actual money, and then normally I contract
7 services. That's the only conversation we had. We did
8 not talk about trial per se. We talked about this
9 deposition specifically.

10 Q. In turning to how you make actual money
11 right now, are you currently employed somewhere as a
12 W-2 employee anywhere?

13 A. No, I'm not.

14 Q. I notice on your LinkedIn profile it notes
15 that you're currently affiliated with the Texas Public
16 Policy Foundation; is that accurate?

17 A. That is correct. I have my own LLC and I
18 contract with Texas Public Policy as a border security
19 immigration, Senior Fellow is the title that I have
20 with them.

21 Q. Okay. I want to ask you about both, but

1 let's start with the Texas Public Policy Foundation.

2 What is that foundation?

3 A. It is a nonprofit conservative organization
4 in the state of Texas that advocates broadly for
5 conservative initiatives, and one of those initiatives,
6 the one I'm involved in is border security, and the
7 specific, they just renamed it, it's called Secure &
8 Sovereign Frontier, and it deals with primarily border
9 security immigration. But Texas public policy is much
10 broader than that.

11 Q. Your role, that was limited to that which
12 you just described?

13 A. Correct, that and then occasionally I'll do
14 some leadership, mentorship type stuff with some of the
15 interns, some of the staff, but my primary role is
16 border security immigration.

17 Q. Do you travel to Texas for that role?

18 A. I work virtually and I travel to Texas and
19 occasionally to other locations to speak and then -- to
20 include Washington, D.C.

21 Q. You're in Oklahoma right now; is that

1 accurate?

2 A. Correct.

3 Q. When did you begin working with the Texas
4 Public Policy Foundation?

5 A. I signed a contract with them in November
6 of 2021. So, shortly after I retired.

7 Q. How do you engage in speaking engagements
8 on their behalf?

9 A. On their behalf, they will reach out to me
10 and ask if I'm available to either speak at a
11 conference or at a specific event, depending on my
12 schedule, I'll agree or I won't agree.

13 Q. Are those paid speaking engagements
14 generally?

15 A. If it's through Texas Public Policy, no,
16 that's covered under my contract. So technically it's
17 paid because they're paying me a retainer fee, a
18 monthly fee. So I don't charge by individual event if
19 they coordinated the event.

20 Q. You also mentioned you have your own LLC.
21 Is that Honor Consulting?

1 A. That is correct, Honor Consulting Plus,
2 but, yes.

3 Q. What is Honor Consulting?

4 A. It's basically a limited liability company.
5 I'm the sole proprietor, if you will. But basically it
6 provides an avenue for me to get income by doing
7 speaking events over a website, I just try to share
8 facts and truth about border security initiative. But
9 primarily it's that information sharing aspect for
10 marketing so that I can get other employment
11 opportunities.

12 Q. Have you gotten other employment
13 opportunities as a result of the marketing that you
14 have done through Honor Consulting?

15 A. Yes, I've gotten numerous speaking
16 engagements and I have two additional contracts that
17 aren't specific to speaking, but they're aligned with
18 giving technical advice and guidance to organizations
19 based on my experience.

20 Q. What are those two contracts that you just
21 referenced?

1 A. One is AIC Partners. It's Open-source
2 intel, intelligence organization, and the second one is
3 called Defend USA and they're a performance sportswear
4 company that works with the Department of Defense,
5 special forces, it's focused on like prescription grade
6 compression wear, if you will, but it's all about the
7 health and -- mental health and physical health of
8 personnel.

9 Q. What was your most recent speaking
10 engagement for which you received compensation either
11 through Honor Consulting or through the Texas Public
12 Policy Foundation? Well, you said those aren't paid.
13 How about let me clarify. What was your most recent
14 speaking engagement?

15 A. Just to clarify, Texas Public Policy is
16 paid, it's just paid as a retainer. I market my
17 services in two ways: I prefer to do the retainer
18 route. I'll also do a case by case fee. I just
19 actually canceled one, but I think the most recent was
20 -- I don't have a date so I'm not going to guess for
21 you.

1 Q. Don't guess.

2 A. It's been a while since the last paid
3 engagement. I have to look at my calendar. I didn't
4 think about that. Sorry.

5 Q. What was the topic of your last speaking
6 engagement?

7 A. Border security and immigration, primarily
8 border security.

9 Q. Have all of your speaking engagements
10 focused on border security and immigration?

11 A. 99 percent of them, yes. I have had a
12 couple of specific engagements focused more on the
13 leadership aspect of being the chief of the border
14 patrol and managing personnel. But the vast majority
15 are -- like 99 percent are border security related.

16 Q. When you speak at engagements that you
17 organize yourself through Honor Consulting, what is the
18 fee that you charge for such engagements?

19 A. It varies. I advertise a flat fee of
20 \$2,500, but depending on the size of the organization,
21 that is varied. What I mean by that is there is a lot

1 of smaller clubs, like some republican, like women's
2 club, for example, that's one I recently did down in
3 San Antonio. They couldn't afford that fee so we
4 worked out a lower fee because I was able to do other
5 speaking engagements at the same time. I think they
6 ended up paying me \$1,250 and then made a donation to
7 the border patrol academy.

8 Q. Are those speaking engagements generally
9 for like an hour?

10 A. That also varies in that I factor into the
11 fee as well. If I can combine them with other events
12 and I don't have to have a long travel time. But most
13 of the time the event is minimum of about an hour and
14 then I do usually provide a question and answer time.
15 On a couple of occasions they have asked me to dedicate
16 more time to actually meet with some of their people
17 individually. And that's why I'm kind of wishy-washy
18 on the fee. It has varied based on the amount of time,
19 not just the specific event. But the 2500 is based on
20 an one hour engagement with question and answer and
21 travel expenses are added on top of that.

1 Q. In your various speaking engagements, have
2 you ever been called upon to speak about the Asylum
3 Officer Rule?

4 A. No, not before this event here, no.

5 Q. I want to turn to your prior work at border
6 patrol. Border patrol is the operational component of
7 CBP that's responsible for securing our nation's
8 borders between ports of entry; is that correct?

9 A. That's correct.

10 Q. You were the chief of border patrol until
11 August 14th of 2021?

12 A. That is correct.

13 Q. When were you promoted to the position of
14 chief?

15 A. February 2nd, 2020.

16 Q. How many years did you serve with the U.S.
17 Border Patrol?

18 A. It was just under 30, it was like 29 and
19 eight months or something like that, 29 and a half
20 years.

21 Q. Is the border patrol the only operational

1 component of CBP for whom you've worked?

2 A. There is a nuance answer. So, yes, yes,
3 the operational office, even though my title was still
4 border patrol agent, I spent several years outside what
5 we would commonly refer to as U.S. Border Patrol or the
6 Office of Border Patrol, working in the Office of the
7 Commissioner, but it was still within Customs and
8 Border Protection and my title was still officially
9 GS-1896 which is a border patrol agent.

10 Q. Did you ever work for the Office of Field
11 Operations, OFO?

12 A. No, I did not. I interacted with them and
13 spoke on their behalf significantly when I was working
14 in the Office of the Commissioner's, Office of
15 Anti-Terrorism, as I just spoke about, but I have not
16 been a CBP officer or assigned directly to field
17 operations.

18 Q. What were the years that you held that
19 temporary post?

20 A. 2003 to 2008, it was various positions with
21 the same responsibility. Focused primarily on CBP

1 level anti-terrorism and interagency coordination
2 issues.

3 Q. Is it correct that you've never held any
4 roles at the Department of Homeland Security or
5 Immigration and Naturalization Service before that?

6 A. No, at the department level, that is
7 correct, I have not.

8 Q. Have you ever held any roles at USCIS, U.S.
9 Citizenship and Immigration Services?

10 A. No, I have not. And to clarify your last
11 question, I have not held any official position at DHS
12 however, you used the term role the second time. On
13 numerous occasions I have been detailed and performed a
14 role at DHS but not an official position.

15 Q. Okay. Did you ever hold any official
16 positions at ICE, Immigration and Customs Enforcement?

17 A. No.

18 Q. Did you ever have any details to ICE?

19 A. No.

20 Q. Did you ever hold any roles officially at
21 the Executive Office for Immigration Review?

1 A. No, I did not.

2 Q. Have you ever had any details to the
3 Executive Office for Immigration Review?

4 A. No, I have not.

5 Q. The details that you referred to at the
6 Department of Homeland Security, what was the nature of
7 those positions?

8 A. 2019, I was detailed to DHS to be a senior
9 advisor directly for the Secretary and I was assigned
10 to coordinate all southwest border enforcements and
11 programs on behalf of the Secretary.

12 Q. What was the length of that detail?

13 A. I would have to go back and look at actual
14 dates. It was just short of a year. I stayed in that
15 position until selected as chief of the U.S. Border
16 Patrol.

17 Q. During your years with border patrol, did
18 there come a point in time when you became involved
19 with policy making?

20 A. Yes. So, back when DHS was initially
21 created in 2003, the commissioner at that point in time

1 put out an edict, if you will, agency wide, it was
2 Commissioner Robert Bonner, to review all policies. I
3 was current -- at that time I was a field operations
4 supervisor at the Nogales border patrol station out in
5 the field. I was assigned by my sector staff. A
6 couple of specific assignments, it was looking at some
7 checkpoint policies and pursuit policy.

8 The reason I gave you that background,
9 after briefing the commissioner in Arizona, I was asked
10 to go to Washington, D.C. and work on antiterrorism and
11 CBP broader policies. That was the assignment I
12 discussed a second ago in 2003 when I ended up working
13 in the Commissioner's Office. And then through that
14 entire time, a significant role, a daily function was
15 working at the DHS level and the CBP level, across all
16 CBP, not just border patrol, to develop appropriate
17 policies to be able to meet our new antiterrorism
18 mission and to take all those agencies, U.S. Border
19 Patrol, Legacy Immigration Naturalization Service and
20 Customs and then build them into one agency. So, I
21 focused heavily on policy for several years.

1 Q. At the conclusion of your time with the
2 Commissioner's Office, from that point going forward to
3 when you left the border patrol, were there other
4 points in time when you held policy making roles?

5 A. So, a lot of leadership positions within
6 the border patrol overlap with policy making roles. So
7 that's a vague question. I'm going to answer it from
8 engagement, not necessarily the person who owned the
9 pen. But when I left headquarters, I went to San Diego
10 Sector as an assistant chief at San Diego Sector.
11 Again, at that level, it's pretty much administrative
12 and policy implementation. But I would constantly have
13 conversations with headquarters personnel on different
14 issues about national level policy. From that -- I did
15 that for one year. And then I moved into -- I moved
16 into the commander of the Brown Field Station. Much
17 more tactical at that point. Because of the
18 relationships I had and the assignments before, I was
19 still asked for input. I had a couple of projects that
20 had national level implications. We were building out
21 what is now border patrol's tracking, sign cutting and

1 modeling system and the policies that went with it.
2 But much more at the operational level. As soon as I
3 transitioned back, I ended up moving into the deputy
4 chief patrol agent position in San Diego Sector. A
5 large part of your role there is to interact with
6 headquarters and provide your expertise and background
7 to influence policy. Again, not holding the pen, that
8 was done at headquarters level, but providing
9 appropriate input was part of my career from then on in
10 all those leadership positions.

11 Q. Are there any policies that were ultimately
12 promulgated that you consider yourself to have played
13 an important role with respect to policy making?

14 A. Yes. So backing up to what took me up to
15 headquarters, rewriting U.S. Border Patrol and Customs
16 and Border Protection's policy for checkpoint
17 operations nationwide, I had the pen for that. Writing
18 the United States Border Patrol's -- I'm sorry, the
19 U.S. Customs and Border Protection's Vehicle for
20 Student Emergency Driving Policy. I worked on that for
21 about five years straight. I had the pen for that for

1 the majority of time, not at the final phases. I was
2 key with the joint terrorism task force and the
3 terrorism policies pushed out across CBP on how CBP
4 would interact and respond to any type of known watch
5 list alert as well as building out training programs to
6 address the unknowns, if you will.

7 And then more recently, as I just
8 mentioned, even when I was the patrol agent in charge
9 of the Brown Field Station, we built out what is
10 currently -- or we initiated and then built out what is
11 currently border patrol's tracking, sign cutting and
12 modeling system, and then the policies that go with
13 that so that there would be increased integrity behind
14 the data that the United States Border Patrol has and
15 shares publicly. And then also we would have a
16 systematic way to be able to answer some questions
17 Congress was asking us specifically about what's
18 actually going on at the border. I was in the middle
19 of that right up until the time I retired.

20 Q. That was going to be my question. You
21 mentioned when you were the patrol agent at the Brown

1 Field Station, when did that begin?

2 A. Do you mind if I look at my sheet here?
3 Because I knew you were going to ask me dates that I
4 couldn't remember. I can share this with you if you
5 want. I literally just typed out the dates of when
6 each one of my positions started. The reason that I
7 hesitate there is you're probably familiar enough with
8 Customs and Border Protection, we do a lot details. So
9 the some time you start via detail versus when you
10 really start isn't always the same. So my official
11 start at Brown Field Station was August 2nd, 2009.
12 That program, the tracking, sign cutting and modeling,
13 it was under a different name then, started probably
14 mid, early 2010. I was in that local program, but it
15 literally just rolled out nationally probably in
16 January or February of 2020 right when I was taking
17 over as chief.

18 Q. You mentioned that you brought with you a
19 document that lists a bunch of dates and different
20 roles that you had. I'm going to ask that we mark that
21 document, that the court reporter mark it as Exhibit 1,

1 or Exhibit A, rather. Because we're doing this
2 remotely, I'm going to suggest if this works for
3 everybody, that Mr. Block just e-mail a copy of it to
4 the court reporter and then she can mark it as Exhibit
5 A and then we'll have it if that works for everybody.

6 MR. BLOCK: Yeah. I can do an Adobe scan
7 basically at some point. Do you need it like right now
8 or just for the record afterwards?

9 Q. Are you representing -- Chief Scott, are
10 you representing to me that the only thing on it is
11 basically CV information in terms of dates that you
12 held various positions?

13 MR. BLOCK: Do you mind if I just hold it
14 up?

15 A. We can hold it up, that's exactly what it
16 is.

17 Q. We can just mark it and then we'll have it
18 for the record.

19 (Deposition Exhibit A was marked for
20 purposes of identification.)

21 Q. Did you bring any other documents with you

1 today?

2 A. No, I did not. I assumed you would want
3 those dates.

4 Q. I appreciate that. Is it fair to say that
5 you have never conducted an Asylum Merits Interview?

6 A. Correct.

7 Q. Have you ever conducted a credible fear
8 interview?

9 A. No, I have not.

10 Q. I assume that, at least in your early days
11 with border patrol, you were tasked with paroling
12 individual noncitizens encountered between ports of
13 entry, at some point in time in your career you have
14 done that; is that right?

15 A. My policy within Customs and Border
16 Protection while I was the chief, my entire career, the
17 only official that had the authority to parole someone
18 in the United States was the chief patrol agent of a
19 sector or higher. So as the chief patrol agent in San
20 Diego Sector and as the chief patrol agent in El
21 Centro, I did effect approve paroles into the United

1 States.

2 Q. I want to shift a bit. Hold on. I want to
3 shift a bit to your role as an expert both in this case
4 and potentially in other cases. Has a court ever
5 accepted you as an expert witness in any case?

6 A. Not to my knowledge.

7 Q. Have you ever prepared an expert report for
8 a lawsuit -- in the context of a lawsuit, have you ever
9 prepared an expert report?

10 A. No.

11 Q. Have you ever given expert testimony at a
12 deposition in a lawsuit?

13 A. No.

14 Q. Obviously I'm not including this one.
15 Other than this one, if that's a fair clarification.

16 A. Other than this one, no, I've usually been
17 a government witness in the past.

18 Q. How many times have you given testimony as
19 a government witness, not in your personal capacity,
20 but as a government witness in your career?

21 A. On numerous occasions. I cannot give you a

1 number. Different lawsuits and then tons of personnel
2 actions that were also taken to the lawsuit level.

3 Q. More than ten do you estimate in your
4 career?

5 A. I'm not comfortable putting a number on it
6 because until issues like this came up, I never really
7 thought about it and tried to keep track. And I spent
8 more of my career as a manager and a leader than I did
9 as an agent. So, that time goes back many years.

10 Q. Okay. That's fine. I don't want you to
11 guess if you don't know.

12 A. I do not know.

13 Q. That's fair. That's what I told you at the
14 beginning. Has a court ever precluded you as an expert
15 in any case?

16 A. No, not to my knowledge.

17 Q. Have you ever appeared as a non-retained
18 expert in any case like you're doing in this case?

19 A. No, I have not.

20 Q. What subject matters, if any, do you
21 consider yourself to be an expert on?

1 A. Border security and the implications of
2 immigration policies on flow and border security
3 operations.

4 Q. Your expertise on those two particular
5 subject areas, are they derived from your experience in
6 border patrol over the course of your career or from
7 something else?

8 A. Primarily from border patrol over the
9 course of my career.

10 Q. You said primarily. Is there something
11 else?

12 A. I say primarily because as a -- I lived on
13 the border before I was a border patrol agent. And
14 border communities crossed back and forth across the
15 border, keenly aware of how the communities interact
16 with each other. And that experience, that life
17 experience, if you will, took place outside the border
18 patrol. While it's nothing compared to my experience
19 in the border patrol, it does influence my opinions on
20 border security operations and how they affect the
21 communities on both sides of the border, not just the

1 United States. So that's why I say primarily.

2 Q. Have you ever studied, in terms of formal
3 courses of study, anything with respect to border
4 policy or immigration law?

5 A. Immigration law throughout the academy, of
6 course. Follow on additional training, of course.
7 When you say formal, as in like a college typesetting?
8 No.

9 Q. Do you consider yourself to be an expert in
10 immigration law?

11 A. No.

12 Q. Do you consider yourself to be an expert in
13 immigration policy?

14 A. As -- I consider myself to be an expert in
15 the relationship between immigration policy and border
16 security operations and how it affects the real life
17 environment on the border.

18 Q. When you use the phrase border security
19 operations, how do you define that, that phrase, that
20 term?

21 A. I define border security operations in the

1 most simplistic form of being able to identify and know
2 what's going on along the border and then make informed
3 decisions that allow us to enforce the law. But to the
4 extent that border control can then detect and
5 interdict people crossing into the United States, which
6 is the primary mission. So the ability to do that is
7 how I define border security.

8 Q. You also mentioned that you consider
9 yourself to be an expert on the effects of policy on
10 flow. Is that accurate? I'm paraphrasing, you can
11 correct the paraphrasing, but.

12 A. Yeah. I consider myself an expert, again,
13 based on 30 years of experience on how specific policy
14 decisions or policies relating to immigration are
15 interpreted and then affect the cross border illegal
16 flow, yes.

17 Q. When you say cross border illegal flow,
18 what do you mean by illegal flow?

19 A. Under 8 U.S.C. 1325, anybody that crosses
20 in between the ports of entry without having -- anybody
21 that crosses in between the points of entry, that's an

1 unauthorized location, that's a violation of law, that
2 is an illegal entry, regardless of what happens after
3 the fact.

4 Q. If that individual ends up making a claim
5 for asylum and the asylum claim is found to be
6 meritorious or they're found to be entitled to
7 protections under the Convention Against Torture, in
8 your definition, you're including those individuals
9 within unlawful immigration because the initial
10 crossing was between ports of entry in violation of
11 law; is that accurate?

12 A. That is in violation of law and it's
13 separate and apart. So that's why I say the effect of
14 immigration policy on that flow because they are
15 somewhat different. But, yes, the illegal entry itself
16 is a violation of law. That's border security. That's
17 border patrol's primary role is to prevent that.

18 Q. I want to talk about, what I am going to
19 refer to probably interchangeably as the Asylum Officer
20 Rule or the IFR, and when I use those terms, I'm
21 referring to the policy that was created, the formal

1 name for which is Procedures for Credible Fear
2 Screening and Consideration of Asylum, Withholding of
3 Removal, and CAT, C-A-T, Protection Claims by Asylum
4 Officers. Are you familiar with what I am talking
5 about?

6 A. I am familiar and I understand what you're
7 saying.

8 Q. So if I say AO rule, AOR or IFR, I'm
9 talking about that. Does that make sense to you?

10 A. Yes, it does.

11 Q. What is your understanding of what the
12 Asylum Officer Rule does?

13 A. My understanding of the Asylum Officer Rule
14 is that it moves the final -- the most important part,
15 it moves the final adjudication potentially from an
16 immigration judge to the asylum officer. In a positive
17 way. If there is a negative determination, the
18 individual alien still has an opportunity to go to an
19 asylum judge for review. But the asylum officers will
20 be able to adjudicate cases in favor of the alien
21 without going to an immigration judge.

1 Q. Is it fair to say that the Asylum Officer
2 Rule was implemented after your departure from the
3 border patrol?

4 A. Yes. My understanding is that the initial
5 publication in the Federal Register, the notice, if you
6 will, the Notice of Proposed Rulemaking, was published
7 on August 20th, I think, and again, I'm pulling that
8 from Open-source, in 2021, and I retired on
9 August 14th, 2021. But it takes a lot of time before
10 something makes it to the Federal Register. So it was
11 in process well before I retired.

12 Q. The rule was actually implemented, and you
13 can tell me, if you don't know this, that's fine, you
14 don't have to agree with me, but I guess I'm asking, is
15 it consistent with your recollection that the rule was
16 implemented on May 31st, 2022 for the first time?

17 A. I do not know the specific dates, and just
18 for clarification, I don't intend to testify on that
19 aspect of it. My testimony is primarily -- well, I'm
20 going to testify on my knowledge. I don't know
21 specific dates it finally went into the publication.

1 Q. That's fine, and I'll clarify again. I'm
2 only asking -- for everything here, I'm only asking for
3 your knowledge. If you don't know something, you don't
4 need to guess. There's no extra credit for correct
5 guesses. It's not the SATs. If you know something,
6 you can tell me. If you don't know something, tell me
7 you don't know something and we'll move on. Are you
8 aware that the rule was paused in April of 2023 until
9 October of 2023?

10 A. I'm generally aware of a pause, some of the
11 legal issues and internal, but I do not know specific
12 dates or all the details of why.

13 Q. Is it correct and consistent with your
14 understanding that the rule applies to adults and
15 family who are placed in expedited removal proceedings
16 and indicate an intent to apply for asylum fear of
17 persecution or torture or a fear of return to their
18 home country?

19 A. That is my general understanding.

20 Q. You mentioned that there was a shift from
21 responsibilities previously held by immigration judges

1 to asylum officers; is that accurate?

2 A. That is my understanding.

3 Q. And those asylum officers are employed by
4 CIS; is that right?

5 A. That is also my understanding, yes.

6 Q. Is it correct that individuals who are
7 placed in expedited removal proceedings receive a
8 positive credible fear determination and are
9 individuals who ICE determines it's appropriate to
10 release are then referred for Asylum Merits Interviews
11 to those individuals at CIS, the asylum officers? Is
12 that correct?

13 A. Would you rephrase exactly what you're
14 asking me?

15 Q. Sure. We talked a moment ago about the
16 individuals that the rule applies to, adults and
17 families placed in expedited removal proceedings who
18 indicate an intention to apply for certain
19 classifications, for asylum, for fear of persecution or
20 torture or fear of return to their home country. And
21 what they're being referred for at that point are

1 Asylum Merits Interviews. Is that consistent with your
2 understanding?

3 A. Yes, it is.

4 Q. And those are also going to be individuals
5 whom ICE has determined it's appropriate to release
6 from custody; is that accurate?

7 A. That was the part of your question that I
8 don't know that I can answer. The decision to release
9 somebody or not to release somebody is based on an
10 individual case by case. It's not -- it's not supposed
11 to be a blanket. But in many cases it does -- this
12 process does result in people being released in to the
13 United States pending the next phase of their
14 immigration process. But that's supposed to be a case
15 by case determination, not a blanket.

16 Q. I wasn't referring to a blanket, I was just
17 referring to individuals on a case by case basis who
18 ICE releases maybe subject to the Asylum Merits
19 Interview?

20 A. That is a possibility, yes.

21 Q. And is it correct or consistent with your

1 understanding that the interview under the Asylum
2 Officer Rule, not before, I'm talking now, these
3 questions I'm about to ask you, let me caveat this,
4 since the rule has been implemented, that the
5 interviews, is it consistent with your understanding
6 that the Asylum Merits Interview takes place in a city
7 in the interior of the United States where the
8 particular noncitizen expresses an intention to go?

9 A. Again, that is my general understanding. I
10 don't think that that's mandated, but I believe that is
11 my general understanding, yes.

12 Q. Before the Asylum Officer Rule was
13 implemented, as a general matter, those Asylum Merits
14 Interviews would have taken place before an immigration
15 judge who most likely would have been in a border state
16 if that's where the migrant was encountered crossing
17 the southwest border; is that accurate?

18 A. I don't know if that's accurate or not.

19 Q. Do you have an understanding that one of
20 the things that the Asylum Officer Rule does is shift
21 some of the asylum processing that used to occur at or

1 near the southwest border to interior cities?

2 A. I do not. I believe that that is implied,
3 but my understanding is based more on the asylum
4 officer than the specific location.

5 Q. Do you agree or have an understanding that
6 the Asylum Officer Rule was implemented in a phase
7 manner since the time it was first announced?

8 A. I do know that it was implemented in a
9 phase manner.

10 Q. By that I mean that it was applied in some
11 cities before other cities; right?

12 A. Correct.

13 Q. As you're sitting here today, do you know
14 how many cities the Asylum Officer Rule was implemented
15 in prior to the pause?

16 A. I do not.

17 Q. What about as of today, so just in general,
18 do you have an understanding as to how many cities the
19 Asylum Officer Rule has been implemented in?

20 A. I do not.

21 Q. Do you know when the Asylum Officer Rule

1 was implemented in any cities in the State of Florida?

2 A. I do not.

3 Q. What about Louisiana?

4 A. I do not.

5 Q. You mentioned earlier that another
6 significant change, or a change, I don't want to put
7 words in your mouth, that the Asylum Officer Rule
8 affected was it moved responsibility for the initial
9 Asylum Merits Interview from immigration judges to
10 asylum officers; right?

11 A. Yes, I believe that is accurate.

12 Q. Do you know how long it takes to get an
13 Asylum Merits Interview under the Asylum Officer Rule?

14 A. I do not.

15 Q. Are you aware of any time limits the rule
16 sets forth for resolving claims?

17 A. I read in the initial notice times. I do
18 not remember off the top of my head what they were.

19 Q. Do you know how many Asylum Merits
20 Interviews took place pursuant to the new processes
21 announced in the rule prior to its pause in April of

1 2023?

2 A. I do not.

3 Q. What about total? Do you have any
4 understanding as to the total number of Asylum Merits
5 Interviews that have taken place under the rule?

6 A. I do not.

7 Q. So would it be fair to say then that you
8 don't know how many Asylum Merits Interviews have taken
9 place in the states of Florida or Louisiana?

10 A. Yes, that would be fair. I do not know.

11 Q. Do you know what the total grant rate is
12 for Asylum Merits Interviews conducted by asylum
13 officers under the rule?

14 A. I do not.

15 Q. And so again, fair to say that you don't
16 know what the total grant rates are for Asylum Merits
17 Interviews conducted under the rule in Louisiana or in
18 Florida?

19 A. That's accurate.

20 Q. So would it be similarly fair to say that
21 you do not know and cannot speak to how those grant

1 rates compare -- how those grant rates for asylum
2 claims under the rule compare to the rates for
3 individuals placed in expedited removal proceedings who
4 passed credible fear before the rule was in effect?

5 A. No, I do not.

6 Q. Would you agree or do you have any opinion
7 on whether changes in substantive asylum law based on
8 court decisions could affect the grant rates of asylum
9 claims over time?

10 A. Could you rephrase that question please?

11 Q. Yeah. It was a bad question. So I
12 appreciate that. Would you agree that changes in
13 asylum law based on court decisions, legal precedent
14 could affect the rate at which asylum claims are
15 granted over the span of time?

16 A. Yeah, I believe that part of the asylum
17 officer's job or an immigration judge's job is to apply
18 the current law. So as judicial decisions are made, as
19 case law changes, then the application of that would
20 also change. That makes sense to me.

21 Q. Now, over periods of time, is it fair to

1 say that the nationality of the populations crossing
2 the border and claiming asylum, and when I say the
3 border, I'm referring to the southwest border, that
4 those change over time? Is that accurate?

5 A. I do not believe you need to limit that to
6 the southwest border, but the populations do change and
7 have changed dramatically. But it involves all of our
8 borders, not just the southwest border.

9 Q. Fair. In terms of the nature of the
10 changing population, you may see changes with respect
11 to the age of individuals, whether they're family units
12 or single adults, unaccompanied children, the
13 nationalities of populations, men versus women, would
14 you agree those are all demographics that change over
15 periods of time?

16 A. Yes.

17 Q. And would you agree that changes in the
18 population demographics of those arriving at the
19 southern border or any border can affect the grant
20 rates for asylum over time?

21 A. Statically it would, but the reverse is

1 also true. It's not necessarily the grant rates. From
2 my experience, the population and the demographics that
3 arrive at our borders and cross illegally is very --
4 it's very often related to perceived or real loopholes
5 that result in people being released in to the United
6 States. So as policies or laws have changed, there's
7 been a predictable increase in illegal crossings by
8 people within that -- the group affected by whatever
9 that policy or law change was.

10 Q. Can you identify any specific individuals
11 who were granted asylum by an asylum officer where you
12 believe the claim of asylum was not meritorious?

13 A. No.

14 Q. Do you have any knowledge as to whether the
15 implementation of the Asylum Officer Rule has sped up
16 processing times for review of asylum claims by those
17 in expedited removal proceedings?

18 A. My understanding is that the entire intent
19 was to speed up that process. But since I'm retired, I
20 do not have specifics on how effective that was, if it
21 actually sped up the entire process or not.

1 Q. So you just don't know one way or the
2 other?

3 A. Correct.

4 Q. Do you know how many, if any, noncitizens
5 processed under the Asylum Officer Rule have been
6 denied asylum and removed from the United States?

7 A. I do not.

8 Q. Do you know how their time in the country,
9 and by that I mean, length of time, span of time,
10 compares to the time in the country on average for
11 noncitizens denied asylum under the expedited removal
12 process prior to the rule's implementation?

13 A. That's a long question. Can you just
14 restate it please?

15 Q. Sure. Individuals who have been processed
16 under the Asylum Officer Rule, denied asylum and
17 removed from the country, assuming for the sake of
18 argument that there are such individuals, whatever
19 number that is, you said you don't know what it is, but
20 whatever number that is, do you know how the amount of
21 time on average they spent in the United States

1 compares to the average amount of time noncitizens
2 denied asylum under the expedited removal processes
3 prior to the rule's implementation on average spent in
4 the United States?

5 A. I do not have that factual data, no.

6 Q. I want to pivot a bit to talk about the
7 NPRM, it's N like Nancy, and I'm saying it's the Notice
8 of Proposed Rulemaking. So if I say NPRM, do you
9 understand, Chief Scott, that that's what I am
10 referring to?

11 A. Yes, I do.

12 Q. I believe you said earlier that it was on
13 or about August 20th that the NPRM was published; is
14 that correct?

15 A. That is correct. That's my belief.

16 Q. The rule was promulgated by the Department
17 of Homeland Security and the Executive Office for
18 Immigration Review; is that right?

19 A. Correct.

20 Q. Now, did you ever read the NPRM as it
21 appeared in the Federal Register?

1 A. After it appeared in the Federal Register,
2 yes.

3 Q. What was your understanding, either from
4 reading it or from prior knowledge of it, you can let
5 me know which one it is, of what the purpose of the
6 NPRM was?

7 A. So, from prior knowledge specifically, and
8 when I am talking about prior knowledge, I participated
9 in the transition from the Trump administration to the
10 Biden administration so myself and my staff were
11 constantly briefing people on current initiatives,
12 different issues coming up, and then immediately
13 following the inauguration, we implement -- we were
14 basically in meetings, having conversations, this, the
15 idea of a rule change to give asylum officers this
16 authority was what I would call a hallway chatter or it
17 was coming up in meetings. It was acknowledged and
18 well known. So, I knew about it from that aspect. And
19 then consistent with my experience, every single
20 conversation we had with -- that I personally had with
21 anybody in the new administration, their focus was on

1 expediting the flow of people into the United States
2 and then this was supposed to expedite that flow as
3 well.

4 Q. When did you first become aware of the
5 purpose or goals connected with the NPRM? Those
6 objectives, as you understood them to be, when did you
7 first, you said you heard hallway chatter and there was
8 discussions about what the subject matter that led up
9 to being the NPRM. When was that, that you first
10 became aware of those objectives or conversations?

11 A. So in a vague manner, honestly during
12 campaign for the current administration and the
13 election cycle, just general awareness as we're
14 watching what could possibly affect border security.
15 More specifically in conversations throughout the
16 transition, and again, I was managing a 20,000 person
17 organization so I did not personally brief every one of
18 those conversations. But any time that my staff
19 interacted with the transition teams, they would come
20 back and back brief me. And this idea of streamlining
21 or speeding up this process was not anything new. In

1 the last administration, they had trained border patrol
2 agents to have more resources, if you will, available.
3 Basically they gave them the same training as asylum
4 officers, from what they believed at the time was the
5 same training, with the idea of relieving the backlog.
6 So this kind of conversation had been ongoing for a
7 while about the asylum process. But this
8 administration took a significantly different approach.
9 Any focus on actually like weeding out fraud or
10 minimizing the flow was off the table and the
11 conversation was just about speeding up the process.

12 Q. What was the nature of the backlog that you
13 referred to a moment ago?

14 A. Of the asylum applicants?

15 Q. No, you mentioned a backlog. And when you
16 talk about a backlog, are you referring to a backlog in
17 terms of processing people for expedited removal before
18 immigration judges or is your reference to a backlog
19 referring to something else?

20 A. My specific reference is the backlog to the
21 entire immigration process for the conversation we're

1 having right now, specifically it is the asylum
2 process. In my experience, and this is well
3 established beyond my experience going back to people
4 like Alan Bersin and Janet Reno, anytime that someone
5 crosses the border and is released into the United
6 States pending immigration hearing or for any other
7 reason, that results in an increased flow across the
8 border which further backs up the system and it just
9 becomes this domino effect. That's what I'm referring
10 to. There's different approaches from different
11 administrations on how to relieve or they believe to
12 relieve that backlog. The conversations that we were
13 having with the transition team, the conversations that
14 I had that went beyond this asylum rule, but also
15 encompassed it, was trying to explain to them and show
16 them that anything that speeds up a process that
17 results in a release is going to have cascading
18 negative effects on border security that we will not be
19 able to control and that is exactly what's happened.

20 Q. After the NPRM was published, there was an
21 opportunity to submit comments with respect to it; is

1 that accurate?

2 A. That is accurate.

3 Q. And at that time, when the NPRM was
4 published you were no longer employed by the border
5 control; is that correct?

6 A. That's correct.

7 Q. Did you submit any comments in response to
8 the NPRM?

9 A. I did not.

10 Q. The interim final rule, that was announced
11 on or about May 29th -- March 29th, excuse me, of 2022.
12 Does that sound right to your years?

13 A. I do not know the specific date, but that
14 sounds reasonable, yes.

15 Q. Were you aware of that at or about the time
16 the IFR was announced?

17 A. Generally, yes.

18 Q. Was that from watching the news or
19 something else?

20 A. Yeah, just watching the news and staying up
21 to date on current events.

1 Q. Is it correct that the IFR made revisions
2 to the process of adjudication of certain asylum
3 applicants and those seeking withholding and removal
4 and protection under the CAT?

5 A. Could you rephrase that please, or just --

6 Q. Fair. No problem. Is it correct that the
7 IFR made revisions to the processes that had been set
8 forth in the NPRM?

9 A. I believe so, yes. I don't have the
10 specifics, but I believe there were changes.

11 Q. My next question was going to be: Do you
12 have any understanding of what those changes were?

13 A. Not specifically, no.

14 Q. Do you have any understanding generally?

15 A. Yes, I do, but not to the detail that I
16 would be willing or wanting to testify to what that is.

17 Q. Well, broadly speaking, is there any
18 category of change between the NPRM and IFR that you
19 feel comfortable that you have a sufficient
20 understanding of to summarize in a broad brushstroke or
21 not?

1 A. So, conceptually, broad brush, the actual
2 level of fear, whether it's more likely than not, if
3 you will, or it's plausible, I believe that was
4 adjusted. I couldn't -- I'm not going to testify
5 beyond that. That level of detail isn't something that
6 I was focused on.

7 Q. Did you read the IFR after it was
8 published?

9 A. I read the public excerpts of it. I did
10 not read the entire thing, no.

11 Q. There was another opportunity after the IFR
12 was issued for further comments from the public to be
13 submitted; is that accurate?

14 A. That's the normal process so I believe it's
15 accurate.

16 Q. Did you submit any comments in response to
17 the IFR?

18 A. I did not.

19 MS. FUDIM: I want to mark as Exhibit B
20 now, since we already have an Exhibit A, what I am
21 calling the Disclosure of Rodney Scott by Plaintiffs.

1 I sent it to you, Mr. Block, and to everybody by e-mail
2 in advance so we don't have to do a share screen. And
3 I will send a copy, Ms. Brooks, I will e-mail you a
4 copy of the document, let me do that right now. So the
5 court reporter has it. Rather than doing a share
6 screen, I think that will be easier. I just e-mailed
7 the court reporter the document. I'm referring to the
8 disclosure of Rodney Scott. I e-mailed it to you,
9 Mr. Block. Do you have it for the client there?

10 MR. BLOCK: Yeah, I have it up on the
11 screen.

12 MS. FUDIM: Mr. St. John, are you all set?
13 Do you have a copy of it in front of you?

14 Q. I'm referring to this document, we're going
15 to mark it as Exhibit B, have you seen this document
16 before, Chief Scott?

17 (Deposition Exhibit B was marked for
18 purposes of identification.)

19 A. Yes, I have.

20 Q. When was the first time?

21 A. Yesterday my attorney shared it with me.

1 Q. Now, would you agree with me that this
2 document, it's a two-page document, and there is G, and
3 by G I mean, ABCDEFG, there are G statements contained
4 in this document?

5 A. Yes, I would.

6 Q. Are these all statements that you either --
7 well, withdrawn. Do you agree that these are all
8 either facts or opinions that you believe to be true?

9 A. Yes.

10 Q. I want to go through them one at a time.
11 So, let's start with A. I'm going to read them into
12 the record and we can talk about them. It says "the
13 Biden Administration consistently focused on expediting
14 processing and increasing opportunities for migrants to
15 enter the United States, and has acted to undermine
16 border security". Did I read that correctly?

17 A. Yes.

18 Q. Do you agree with that statement?

19 A. Yes.

20 Q. What period of time does that statement
21 pertain to?

1 A. It pertains to the entire Biden
2 Administration, from what I have seen, but specifically
3 it pertains to my direct engagement as the Chief of the
4 United States Border Patrol. From the transitions
5 prior to the inauguration, through the inauguration and
6 up to August 14th, the day that I retired.

7 Q. Do you believe this statement to be a
8 statement of fact or a statement of your opinion?

9 A. I believe it to be a statement of fact
10 based on evidence and conversations with people well
11 beyond myself involved in border security.

12 Q. What do you mean by expedited processing in
13 this statement?

14 A. So, like any business whatsoever, you have
15 limited or you have -- everybody has limited resources
16 and you have to decide where to apply those. Over my
17 entire 30 year career, every conversation that I was in
18 about border security and where we should apply
19 resources had a component to that that was about
20 securing the border and then making sure we could do
21 our fundamental mission of knowing who and what crosses

1 the border. And we also talked about processing times
2 and time in custody and everything else.

3 The Biden Administration shifted that
4 dynamic completely and we were not allowed, and when I
5 say allowed, if we brought up anything about the
6 threats involved at the border, deterrents, we were not
7 allowed to talk about deterrents, there was no
8 conversations allowed whatsoever about slowing down the
9 flow. And again, just for clarification, when I say
10 that, I mean literally in a meeting if the U.S. Border
11 Patrol, myself or others would talk about this decision
12 of allowing, I'll use a different example, of allowing
13 just a blanket, a waiver of juveniles to come in under
14 Title 42 will result in more. Like I don't want to
15 hear it. That's not what we're here to talk about.
16 Our conversations were literally shut down.

17 Then we were -- I was ordered and forced to
18 redirect significant financial funding from enforcement
19 operations, from proposed technology initiatives to
20 bolster and beef up what the administration wanted to
21 call welcoming centers. They literally wanted to call

1 them welcoming centers and we pushed back. And now
2 that's what you commonly are here to talk about
3 processing centers or short-term detention soft-sided
4 facilities within the border patrol.

5 Q. I'm going to stop you there only because my
6 question was what do you mean by expedited processing.
7 And so I just want to stick to that particular
8 question. Is there a defined meaning in your mind as
9 to what that phrase means as used in subsection A?
10 Just the phrase expedited processing.

11 A. Yes, but I think it's very important to
12 have the context that I just gave you. So the reason
13 the funding and the soft-sided facilities were pushed
14 was solely, and this was a statement that was given to
15 me, to reduce time in custody and speed up the
16 processing so that we don't have backups into border
17 patrol stations. It literally was about, and this
18 isn't made up, this is an opinion, this is factual
19 statements, we don't want people backed up along the
20 border, we want them processed and we do not want
21 people detained.

1 Q. Did you ever experience a problem with the
2 fact that there were a backup of individuals at border
3 patrol stations?

4 A. Constantly.

5 Q. Let me ask you this: It sounds like, and
6 you can correct me if I'm wrong, but it sounds like to
7 me when you're speaking about the focus on expedited
8 processing that you're speaking to a range of different
9 pathways. So including those placed into forwarding
10 proceedings. Is that accurate?

11 A. Correct, in general terms, and when I'm say
12 processing right now, I'm talking about any processing
13 pathway between prosecution, which would be best case
14 scenario, to immigration hearings to just being
15 released.

16 Q. So not just expedited --

17 A. Get deported. Sorry. I didn't mean to
18 talk over you.

19 Q. So not just expedited removal proceedings?

20 A. Correct.

21 Q. Now, you also have -- there is also a

1 reference here to migrants, the word migrants. What
2 migrants are you referring to?

3 MR. BLOCK: Can I just seek a
4 clarification?

5 MS. FUDIM: Yes.

6 MR. BLOCK: I don't believe Mr. Scott wrote
7 this disclosure so if you just phrase not that he's
8 referring to, because I don't believe he wrote it. I
9 just don't want --

10 MS. FUDIM: I appreciate that. Let me
11 circle back.

12 Q. You mentioned that the first time you saw
13 this document was yesterday; is that correct?

14 A. That's correct.

15 Q. Did you have an understanding prior to
16 yesterday, in the past several months, that a document
17 of this type was going to be drawn up and shared with
18 defendants in this matter?

19 A. Generally by procedure, yes.

20 Q. What did you understand that that document
21 was going to be?

1 A. It would outline what Rodney Scott as a
2 witness would potentially testify to in this
3 proceeding.

4 Q. What role, if any, did you have with
5 respect to the creation of this document including the
6 ideas that are contained within it?

7 A. As stated earlier when Scott St. John from
8 the state of Louisiana reached out to me, told me that
9 my name was referred by another witness, he asked what
10 I would be able to offer as far as factual information
11 about the process and I outlined for him that
12 information. And that's what's pretty much in this
13 document.

14 Q. And the question was, what factual
15 information you would be able to offer?

16 A. Yes, testimony. So, based on my
17 professional experience and my direct engagements, what
18 could I testify to? What would I be willing to testify
19 to?

20 Q. You mentioned you were referred by another
21 witness. Do you know who that was?

1 A. I believe it was Art Arthur. He was a
2 prior immigration judge and he's part of some of the
3 border coalition work that I have done.

4 Q. Have you spoken to Mr. Arthur recently?

5 A. I have.

6 Q. When was the most recent time you spoke to
7 Mr. Arthur?

8 A. Via texts, he's on a group chat so it would
9 have been probably yesterday. Verbally, it's probably
10 been months.

11 Q. Did Mr. Arthur share with you that he was
12 deposed in this case last week?

13 A. He did not.

14 Q. Were you aware of that?

15 A. Yes, I was.

16 Q. How did you become aware of that?

17 A. I believe Scott St. John told me that he
18 was a witness and that he was going to be deposed. My
19 understanding of sharing that information with me was,
20 one, to know how they got my contact, and two, was so
21 that I would know not to have conversations or share

1 information or anything that would potentially hurt
2 this case or anything in any way.

3 Q. Fair to say that you complied with that and
4 you haven't discussed your testimony with Mr. Arthur?

5 A. I have not discussed it with Mr. Arthur at
6 all.

7 Q. Going back to the document that we have
8 marked as Exhibit B, and looking at the first bullet
9 pointed item which is labeled A, there is a reference
10 to the word migrants. Understanding that you didn't
11 write it, but that you indicated you agree with this
12 statement as written, who does the word migrants refer
13 to as used in statement A?

14 A. So, specific to this and my interpretation,
15 migrant is referencing illegal aliens in the United
16 States, generally that term is used much broader. But
17 I'm interpreting it as people that border patrol were
18 engaged with and that would be illegal aliens.

19 Q. So as used in sub A, migrants would refer
20 to, for example, those who present at ports of entry
21 and interact with OFO?

1 A. If they lacked immigration documents when
2 they arrived, yes.

3 Q. So --

4 MS. FUDIM: I have 11:22, do we want to
5 come back at 11:30?

6 THE WITNESS: Works for me.

7 (A discussion was held off the record.)

8 Q. When we left off, we were talking about
9 statement A on the document that we have marked as
10 Exhibit B to the deposition. We were talking about
11 what the word migrants refers to, and I believe you
12 said that it includes, in your mind as accurate within
13 that statement, individuals who present at ports of
14 entry and claim asylum and may even get asylum, but if
15 they're undocumented when they appear at ports of
16 entry, you believe that that would be subsumed within
17 what the word migrants means as used in statement A; is
18 that accurate?

19 A. That is accurate.

20 Q. There's a statement here that the Biden
21 Administration has acted to undermine border security.

1 What do you mean by that? And I say you, and I
2 understand you didn't write this, but given that you
3 have stated that you agree with this statement, I may
4 colloquially ask you in connection with this statement
5 and others, what do you mean by that? Just for the
6 record, I understand you didn't write this. But I'm
7 going to say the word you because it seems like you
8 have adopted these statements as accurate. Is that
9 fair?

10 A. That is fair, yes.

11 Q. So, what do you mean by that statement with
12 respect to undermining border security?

13 A. So going back to our conversation a minute
14 ago, border security is our ability to basically
15 control who and what enters our country. And in this
16 context, because you brought up ports of entry, at the
17 ports of entry and in between the ports of entry. We
18 have limited resources. So every decision we make to
19 basically to take an agent or an officer off of
20 enforcement duties, and when I say enforcement duties
21 for a port of entry, that's literally talking to

1 somebody at primary, inspecting a vehicle that's been
2 sent to secondary, running an x-ray machine, basically
3 trying to make sure we know who and what is coming into
4 the country.

5 In between the ports of entry, that
6 includes patrolling the border, monitoring surveillance
7 equipment, and then of course in both contexts when you
8 see something happening, be able to respond to that.
9 We explained -- I explained to the administration time
10 and time again, and actually several people in the
11 administration like Blas Neto in CBP have been in CBP
12 before and already knew a lot of this information and
13 acknowledged it, that any time you knowingly increase
14 the flow, and you have to pull people off at the port
15 of entry and CBP officers to process these
16 administrative cases. This is why the ports of
17 entry -- overcrowding and actually making sure we can
18 focus on border security issues because there are real
19 threats, was a key part of limiting the amount of
20 people that could come into a port at any given time
21 without immigration documents because it also slows

1 down legitimate travel.

2 In between the ports of entry, it's
3 actually almost significantly worse. Because at a port
4 of entry, things get backed up. But in between the
5 ports of entry, things get missed. And the more that
6 border patrol agents get pulled aside to actually
7 process administrative immigration cases, or for any
8 reason to be quite honest, they're not patrolling the
9 border and the vast majority of the northern border and
10 huge sections of the southwest border still lack
11 infrastructure and technology. And this was at the
12 same exact time that the Biden Administration stopped
13 the wall construction, which no one talks about it, but
14 it had a very significant technology package in it as
15 well. So by pulling an agent aside to process illegal
16 aliens coming into the United States in these
17 massive -- increasing numbers at that point in time, it
18 directly undercuts border security because it undercuts
19 the ability of the United States Border Patrol to
20 patrol the border and to stop the cartels or anybody
21 from being able to enter our country unabated.

1 Q. Do you have any evidence that the Asylum
2 Officer Rule in particular has undermined border
3 security?

4 A. I believe we do. But it's in a bigger
5 context. The problem with this entire discussion, and
6 I don't mean this lawsuit, I mean, border security in
7 general is every decision has second and third level
8 effects. So the border -- the Asylum Officer Rule is
9 just one of many. But anything that results in people
10 being processed, very quickly, the faster somebody gets
11 released into the United States, the more the flow
12 increases. So if the asylum rule, for example, had
13 been properly framed with detention or something like
14 the Remain in Mexico program, anything that basically
15 made sure that the people were not released into the
16 United States before their case was adjudicated would
17 not have undercut border security like this. But the
18 conversation about what was commonly referred to as
19 catch and release for any reason, which the Asylum
20 Officer Rule potentially speeds up, directly affects
21 cross border flow, and again, I'm testifying to this

1 today, but this goes well beyond me. These are
2 nonpartisan issues going back to Janet Reno and Alan
3 Bersin days under the Clinton Administration where a
4 lot of my border security experience was developed.

5 I do believe that the Asylum Officer Rule
6 speeds up the process, speeds up the amount of time or
7 shortens the time in custody, if you will, and
8 potentially results in people being released quicker
9 which will dramatically increase the flow because every
10 one of them calls home and tells their family and
11 friends what happened.

12 Q. Do you have any evidence that anyone has
13 called home and told their friends about what has
14 happened specifically with respect to the Asylum
15 Officer Rule?

16 A. Specific to the Asylum Officer Rule, no,
17 because most -- again, this is now my experience, most
18 migrants, is the term we used here, but most illegal
19 aliens that cross the border and get released, they
20 don't really even understand the process, they don't
21 know anything about the Asylum Officer Rule, they just

1 know they were released. So my testimony is about the
2 effects. When someone is released into the United
3 States, even for whatever reason, and in this case it's
4 specifically to the Asylum Officer Rule, what affect
5 does that have on border security? There is an
6 unquestionable, there's unquestionable evidence it
7 dramatically increases the flow and it's done it for
8 decades because it's basic human nature.

9 Q. Do you have any evidence that the Asylum
10 Officer Rule in particular has increased flow of
11 migrants?

12 A. I'm going to stick with the testimony I
13 already gave. As part of a bigger scheme, the Asylum
14 Officer Rule speeding up the release, I believe, based
15 on my experience, is part of the reason that we saw
16 3.2 million illegal encounters last year. One of many
17 factors. It's not the sole factor.

18 Q. In your belief, policies work together with
19 other policies and have interplay with socioeconomic
20 conditions going on in the world and all of these
21 factors work together and you have to consider them in

1 totality? Is that fair to say? Is that fair to say
2 that's your belief?

3 A. I'm going to rephrase that slightly. I
4 believe what you said minus the socioeconomic issues
5 around the world, yes. I do believe that we also have
6 to factor in those when we're talking operational.
7 But, again, from my experience, those are big, big
8 issues outside the boundaries of the United States that
9 we cannot control. We can only influence. So when it
10 comes to what can we control, everything else that you
11 stated is accurate.

12 Q. Is it fair to say that you cannot isolate
13 the effects of the Asylum Officer Rule to the rule
14 itself without considering in your view other policies
15 or actions of the government that exist during, before
16 or after?

17 A. I would not state cannot, but in my
18 experience, they all interact with each other. And in
19 this case, the Asylum Officer Rule directly aligns
20 ideology-wise with many of the other initiatives that
21 the Biden Administration has put in place. So would

1 have the same effect, a dramatic increase in cross
2 border illegal activities. So it's hard for me to
3 carve out how much of that had to do with the asylum
4 rule and how much of that had to do with shutting down
5 Remain in Mexico, reducing detention space, and several
6 of the other initiatives that they have done.

7 Q. Then would it be fair to say that you don't
8 have evidence, when I'm using the word evidence here,
9 I'm using it in a narrow sense in terms of data. You
10 don't have data. Let me rephrase the question that
11 way. Is it fair to say then that you don't have data
12 to show that the Asylum Officer Rule individually has
13 increased migrant flows?

14 A. I argue the premise of the question is
15 skewed, that just like border security, there are
16 multiple factors involved. If you can't delineate
17 exactly 9 percent or 10 percent of activities is
18 because of a specific policy. That doesn't change the
19 fact that in the bigger picture and in the scheme of
20 things that it affected it. I believe that the Asylum
21 Officer Rule was one of multiple factors that you can't

1 separate out now because many things were done at the
2 exact same time. However, based on my experience, and
3 many others, releasing people into the United States
4 has always had a direct impact on flow. So I believe
5 there is evidence that the Asylum Officer Rule has
6 played a role in increased illegal flow across the
7 southwest border. I cannot tell you the specific
8 number of people because that gets into human nature
9 and no one can tell that you number.

10 Q. Do you have any evidence that more people
11 have been released pursuant to the Asylum Officer Rule.
12 So, again, speaking to population of individuals who
13 are subject to it in the first place. So we're talking
14 about expedited removal, people express credible fear,
15 as we discussed it earlier, do you have an
16 understanding that more individuals have been released
17 under the Asylum Officer Rule that would have been
18 released had the rule not existed?

19 A. I do not have that specific data.

20 Q. Do you have any evidence that or are you
21 aware of any evidence or can you point me to any

1 evidence that by decreasing processing times for Asylum
2 Merits Interviews for certain noncitizens in expedited
3 removal proceedings who are subject to the Asylum
4 Officer Rule, more non-meritorious claims have been
5 granted than otherwise would have been had the system
6 remained adjudicatory in front of an immigration judge
7 in the first instance?

8 MR. ST. JOHN: Objection. Vague. The
9 Chief's testimony is evidence. So you need to clarify
10 when you're asking about data.

11 Q. Let me ask you this. I'll rephrase the
12 question. Do you believe that as a result of the
13 Asylum Officer Rule, more non-meritorious claims have
14 been granted or is that a subject in which you have no
15 opinion?

16 A. That is a subject that I'm not going to
17 testify to that I have not monitored.

18 Q. I want to go down to B on the list. So you
19 can take a look at the Exhibit B in front of you and
20 I'm looking at point B. I'm going to read it and you
21 can let me know if I read it incorrectly. "The Biden

1 Administration's immigration and border policies were
2 developed and drafted by political appointees". Did I
3 read that correctly?

4 A. Yes.

5 Q. Is this a statement that you agree with?

6 A. Yes.

7 Q. Is it a fact or an opinion?

8 A. I believe it's a fact.

9 Q. Who are the political appointees that you
10 are referring to? And again, I say you with the same
11 caveat, I understand you didn't write this.

12 A. Correct, but I do agree with them that is
13 my statement. In prior -- in my experience, border
14 patrol government, career government officials were
15 always included in policy-type development.
16 Immediately upon inauguration, the new chief of staff
17 showed up within CBP, and you asked for specifics, her
18 name was Lise Clavel, and she made it pretty clear that
19 they didn't really have any interest in our opinion.
20 She wasn't going to travel down to the border, that
21 they were there to make sure that the Biden policies

1 were implemented. Shortly thereafter, which is fine,
2 but shortly thereafter I realized very, very quickly in
3 meetings, normally we are going to -- I'll give you an
4 example, a morning briefing about the border, with
5 White House personnel, with DHS personnel, and we would
6 talk about different issues and we would talk about
7 solution sets. Border patrol, me specifically, we were
8 allowed and tasked to brief out data and then more
9 basically shut down any time we wanted to talk about,
10 hey, the effects of it or policy or implementations. I
11 quickly found that my staff was being left out of
12 meetings left and right. I was being left out of
13 meetings left and right.

14 In March, I believe it was, of 2021, they
15 brought on Blas Neto as the chief operating officer of
16 CBP. Blas told me to my face that they did not -- the
17 administration did not trust the border patrol and,
18 therefore, did not trust me. And they weren't looking
19 for our input and opinions on policies. It went from a
20 situation, again, where my entire career when we were
21 participating, and even if you didn't agree with me, at

1 least you had a chance to make your argument, to where
2 I was getting e-mails through Lise Clavel that
3 supposedly came directly from the Secretary telling us
4 specific new policies or operational guidelines that we
5 would employ the next day. With no engagement
6 whatsoever.

7 At the DHS level, there was a gentleman
8 named Dave Shahoulian. We would have conference calls
9 and this involved ICE and many other agencies, where we
10 would brief out statistically what was going on on the
11 border. But, again, as soon as we started talking
12 about any type of solutions or reducing the flow, the
13 conversation was shut down and stymied. Any time I got
14 any guidance or direction on new groups of aliens that
15 we were going to exclude from Title 42, for example,
16 that came to me in an edict form without any kind of
17 conversation. It was always the political appointees.
18 So that is why I believe that statement is factual.

19 Q. Let's look at number C, letter C. It says
20 "the Biden Administration did not seek advice from or
21 ignored advice from experts regarding immigration and

1 border policy including with respect to the asylum
2 IFR". Did I read that correctly?

3 A. You did.

4 Q. Do you agree with that statement?

5 A. I do agree with that statement.

6 Q. Is it a fact or is it an opinion?

7 A. I believe it is a fact. Again, going back
8 to prior statements earlier in this conversation, we,
9 and I say we, myself and my staff knew about the idea
10 of this IFR. We had heard and it was brought up kind
11 of sidebar issues in a few meetings. But there was no
12 specific meeting about it. Within CBP and within DHS,
13 there is a process called exec sec where any kind of
14 big policies or procedures are normally, and this is
15 after some kind of work group meetings and
16 conversations, once it's formalized, that is then sent
17 around to the executive assistant commissioners, which
18 the chief is one of, by position, by definition, in a
19 formal written process, then the border patrol, we
20 nicknamed it a blue sheet process, and you get to
21 review that, comment on it, concur with it, you don't

1 concur with it. That didn't take place. But beyond
2 that, one of my staff members vented directly to me
3 that the Asylum Officer Rule, idea, this is before
4 publication, came up. He was talking to one of the
5 political appointees, I do not know which one, but in
6 this case it would normally have been Blas or Lise
7 Clavel, and he told them, with no uncertain terms, that
8 this would increase cross border flow unless they
9 factored in detention or remain outside the country.
10 That anything, based on our experience, anything that
11 resulted in people getting released quicker would have
12 a very rapid effect on border security, negative effect
13 because it would increase the flow and we would not be
14 able to then be able to actually effectively patrol the
15 border because our resources would be pulled away. And
16 he said that the individual, even joked about putting
17 border patrol agents back -- that we would want border
18 patrol agents back in those positions or whatever and
19 then shut down the conversation. So that is why I
20 believe that is a factual statement.

21 Q. Who are the experts that you believe the

1 administration ignored advice from?

2 A. Career government personnel. I don't --
3 I'm sorry, I didn't mean to talk over you.

4 Q. Ignored advice means someone thought to
5 give it and it was rejected. Is that what you mean by
6 ignored advice?

7 A. That's exactly what I mean, and I believe
8 I'm on record with congressional testimony, I wrote a
9 letter to Congress immediately upon on my retirement
10 identifying this and asking the Oversight Committees to
11 look into it. I believe it's well documented through
12 testimony of other former government officials and
13 public statements, that throughout the entire
14 transition, we were explaining border security,
15 explained the push/pull to the certain extent, what we
16 could and couldn't control, but how releasing people
17 has a direct impact on the flow. And over and over
18 again what -- and again, I'm going off public
19 information now, but on the ICE side they ignored them
20 and on the CBP side. Now, personal firsthand
21 information, on the initial conference calls with Dave

1 Shahoulian, directly with Blas Neto, with Lise Clavel.
2 They ignored us. They did not want to have any
3 conversation whatsoever about threats that could
4 possibly be crossing the border or deterring or slowing
5 down the flow.

6 Q. My question is a fairly narrow one though.
7 Can you identify the experts by name, specific
8 individuals, that you believe the administration
9 ignored advice from with regard to the IFR?

10 A. Rodney Scott, Raul Ortiz, Tony Barker,
11 probably Robert Danley. These were all people on my
12 staff that interacted directly throughout the
13 transition and directly with the political appointees
14 after they came into CBP. It goes beyond that, but
15 those are just a few.

16 Q. Now, are you aware that after the NPRM was
17 published, are you aware of how many comments were
18 received?

19 A. No.

20 Q. If I said that it was approximately 5,000,
21 does that ring any bells or you just don't know one way

1 or the other?

2 A. No, I didn't pay any attention. I don't
3 know one way or the other.

4 Q. At that time when comments would have been
5 received in response to the NPRM, you were no longer
6 employed by the border patrol; correct?

7 A. Correct. And for clarity, I wouldn't have
8 paid attention to it then either because of some of the
9 things you identified earlier. That was outside of my
10 traditional scope. Those comments wouldn't have come
11 to me anyway. Traditionally the chief of the border
12 patrol, as the senior most official in the country
13 responsible for securing the borders, my opinion and
14 that of my staff would normally be factored in and
15 considered. That's what I'm testifying about. Not
16 the --

17 Q. So when you're saying experts, you are
18 including yourself within that group as it relates
19 to --

20 A. Yes.

21 Q. Now, is it fair to say that you're not

1 aware of what consideration was given to any of the
2 comments that were received in response to the NPRM?

3 A. That's correct. I was not part of that
4 process.

5 Q. I want to move to point D. "Migration has
6 exploded due to Biden Administration policies,
7 statistics released by Biden Administration downplayed
8 the level of migration and releases into the interior".
9 Do you see that?

10 A. Yes.

11 Q. Did I read it correctly?

12 A. Yes.

13 Q. Do you agree with that statement?

14 A. Absolutely. Yes.

15 Q. Is it a fact or an opinion in your view?

16 A. It's a fact.

17 Q. Maybe just to speed this up as well, I'll
18 ask you, obviously you see a pattern here, so I'm going
19 to ask you that question about each one of these
20 statements so we can speed it up. If you'd like, you
21 can take a look at all the statements and tell me, do

1 you believe them all to be fact? And then I can stop
2 asking you that question individually.

3 A. Yeah, every one of them is fact. I believe
4 every one of them is fact.

5 Q. So going back to D, where it says migration
6 has exploded. So the first question I have is:
7 Migration, are you referring to lawful migration,
8 unlawful migration, both, something else?

9 A. Illegal migration.

10 Q. As we defined that term earlier?

11 A. Yes.

12 Q. What do you mean by exploded?

13 A. Significantly increase to levels that were
14 -- I don't even think this was predicted. We knew it
15 was going to go up. But levels never seen before.

16 Q. What policies are you referring to?

17 A. The group of policies, the package of
18 policies that resulted in what we commonly refer to as
19 catch and release. So anything that speeds up the
20 release. Striking the detention space, prioritizing
21 releases, blanket waivers of individuals and

1 specifically removing the Remain in Mexico, Migrant
2 Protection Protocols Program and getting rid of the
3 Asylum Cooperative Agreements, all together play a part
4 in this massive increase in illegal immigration.

5 Q. In your view it's due to the confluence of
6 different programs?

7 A. That's fair, yes.

8 Q. What statistics are you referring to in D?

9 A. Specifically how information is released,
10 but a good place to go is CBP.gov, on their website
11 they have probably the most in depth information about
12 cross border illegal activities. There's specific
13 statistics on there. When I talk about downplay, I
14 talk about ignoring specific data. For example, this
15 administration continually makes statements in Congress
16 and public telling people that basically all fentanyl
17 comes through the ports of entry, nothing comes in
18 between the ports of entry. They don't make that exact
19 statement. They allude to it by talking about seizures
20 and statistics.

21 And they talk about everything crossing in

1 between the ports of entry in the context of asylum
2 seekers or economic -- they actually don't even talk
3 about economic migrants, they talk about asylum
4 seekers, and they completely ignore these other
5 significant, significant factors such as the terrorism
6 watch list hits, the criminal aliens, the over 1.7
7 million documented got aways that border patrol has and
8 the hundreds of miles of border that are completely
9 going unpatrolled. That's what I mean by downplaying.
10 Statistics factual downplaying is how the information
11 is delivered to the public.

12 Q. Are you suggesting that the numbers
13 reported on CBP's website and made available to the
14 public are false?

15 A. No, I'm saying those numbers are real, that
16 those numbers come right out of a system and that they
17 tell the story. That's factual evidence. I'll saying
18 the downplaying part is the spin put on those numbers
19 when they do public releases from CBP and DHS. That
20 they choose to ignore these other aspects and they try
21 to caveat it as all asylum seekers when that is not

1 even true.

2 Q. But you're not suggesting that the public
3 numbers that are reported have been falsified?

4 A. No, I believe the numbers that CBP are
5 putting out are the best that they can possibly put out
6 at the time. There's more information there, but I
7 believe those numbers are as factual as possible. CBP
8 would never put out information that was not true. Not
9 intentionally. Government personnel.

10 Q. I'm going to number E, letter E, letter E.
11 I'm going to read it. "The southwest border is in
12 crisis, that crisis is attributable to actions taken by
13 the Biden Administration, cartels effectively control
14 who and what enters the United States, and the federal
15 government lacks operational control of the southwest
16 border". Did I read that accurately and do you agree
17 with that statement?

18 A. You did read that accurately and I do agree
19 with that statement.

20 Q. What is in crisis mean?

21 A. In crisis means that we have absolutely no

1 control, probably less than we have ever had before,
2 about mainly the United States Border Patrol and the US
3 government about who and what can enter our country.
4 On top of that, the U.S. Border Patrol, and this is
5 documented currently through Twitter, through Facebook
6 messages and through a lot of public media accounts,
7 migrants are being abused at a level that we haven't
8 seen before. They're putting their families at risk.
9 We have shut down the DNA testing so increased child
10 trafficking I guarantee is going on. Again, how do I
11 say that? That's based on my experience and how we
12 have identified trafficking cases before versus the
13 lack of the ability to do that now.

14 Right now, as we speak, there's hundreds
15 and hundreds of miles of border that are completely
16 going unpatrolled. Here is the difference. That could
17 have been and should have been effectively patrolled.
18 I'm not comparing this to like Utopia, I'm comparing it
19 to what strategy the border patrol had in place, where
20 we were going.

21 The Lukeville point of entry was completely

1 shut down yesterday to all legal trade and travel just
2 to process illegal aliens who are crossing through this
3 remote area. And one only has to look a map and look
4 at geography in Mexico and Arizona to realize nobody,
5 no migrant that really was coming to the United States
6 to just claim asylum would pick that place on their
7 own. They were taken out there by the cartels.

8 And to that aspect of it, over my career,
9 and I think this is well documented, well outside the
10 border patrol, the Mexican cartels have significantly
11 expanded and constantly increase their control of the
12 southwest border. I'm not, I want to be clear, I'm not
13 alleging that every single migrant pays the cartel.
14 What I am saying is that the cartel monitors every mile
15 of that border and they control who and what crosses
16 the border very, very intentionally to overwhelm US law
17 enforcement, create gaps in border security so they can
18 bring in the second wave of whatever it is, people or
19 narcotics or drugs.

20 The FBI director acknowledged that exact
21 tactic in federal testimony recently. So I'm not

1 making this up. This is fact. The massive amount of
2 illegal immigration combined with everything else we've
3 talked about, combined with shutting off the technology
4 package on the southwest border that was going in with
5 the border wall system has made what was already a
6 challenging environment a complete crisis and it has
7 now put the cartel in a position where they literally
8 get to pick and choose where border patrol agents are
9 by pushing illegal aliens across the border and that
10 opens up the rest of the border for whatever nefarious
11 activities that they want to do.

12 I believe that is fact. Again, I believe
13 it's backed up by Director Wray of the FBI's testimony
14 to Congress not too long ago sitting beside Secretary
15 of DHS.

16 Q. You talked about cartels and their
17 functions and increase prevalence of their rule at the
18 southwest border. Do you have any evidence that the
19 Asylum Officer Rule has contributed to what you view as
20 the increased control by cartels?

21 A. I believe anything that actually, again,

1 results in people being released into the United States
2 before their case is completely and fully adjudicated,
3 their immigration case, directly results in more people
4 being willing to come to the southwest border and try
5 to get in. That is directly related to the customer
6 base that the cartel has for two reasons. One, to make
7 money, and more importantly though, two, to use as
8 distractions to overwhelm law enforcement.

9 So as a larger package of multiple
10 initiatives rolled out at almost the same time that
11 created the border crisis we have today, yes, I believe
12 that the Asylum Officer Rule plays a role in this,
13 minus detention capability or Remain in Mexico program
14 tied to it.

15 Q. I hear you saying, I believe. And
16 everything you just said. But I'm wondering if you
17 have any specific evidence to support that the Asylum
18 Officer Rule has contributed to the prevalence of
19 cartel control at the southwest border, specific
20 evidence?

21 MR. ST. JOHN: Objection, mischaracterizes,

1 his testimony is evidence.

2 Q. You can answer.

3 A. I believe the statistics bear out my
4 belief, and my belief was built over almost 30 years of
5 in the border control experience of cause and effect.
6 And, therefore, I believe that it is evidence and
7 factual. Do I have a number to provide you? If this
8 was the only change that the administration had made, I
9 believe that that number would be easier to find, while
10 still difficult, but the administration changed
11 multiple different programs and factors to include this
12 that resulted in an increased number of people getting
13 released into the United States which created the
14 crisis we have on the border today. I cannot give you
15 a specific number.

16 Q. You can't point me to what those statistics
17 are?

18 A. I challenge you to find anybody that can
19 give you a specific number when so many factors
20 changed.

21 Q. Same question, and I assume the answer is

1 the same, but for the sake of the record, same question
2 with regard to child trafficking and the Asylum Officer
3 Rule. Same answers?

4 A. Yeah, same answers, and specific to child
5 trafficking, this one is near and dear to my heart, I
6 think most people understand, that most people don't
7 understand the situation. Most migrants or illegal
8 aliens don't understand the situation they're in when
9 the border control encounters them. So the only way
10 agents have historically been able to identify
11 trafficked -- children trafficking schemes is by doing
12 in depth face to face interviews.

13 The Asylum Officer Rule without appropriate
14 detention or Remain in Mexico plays a role in
15 increasing the flow that we're seeing on the border
16 today. That flow has overwhelmed law enforcement on
17 the border, border patrol specifically, to the point
18 they can no longer do those face to face interviews.
19 They just don't have time. Based on my experience, and
20 this is a belief, I do not have a number for you, based
21 on my belief on how every trafficking case we

1 identified before has been identified and then combined
2 with shutting down the DNA testing program, I believe
3 statistically that there is more child trafficking,
4 human trafficking going on today than ever before.

5 Q. Is it correct when I say that the Asylum
6 Officer Rule does not apply to unaccompanied minors, is
7 that consistent with your understanding?

8 A. Correct.

9 Q. Let's go to number F, or letter F, I keep
10 saying number F, letter F. "The crisis and mass
11 migration at the southwest border adversely impacts
12 Plaintiff states". Do you see that?

13 A. Yes.

14 Q. Do you agree with that statement?

15 A. I agree with that statement based on my
16 experience and then just statistical data.

17 Q. Let's talk about both. One, your
18 experience, and two, what statistical data are you
19 relying upon in support of that statement?

20 A. So based on my experience, nothing stays at
21 the border. Very, very few illegal aliens crossing the

1 southwest border stay at the border. As chief of the
2 border patrol, I was also, one of my many roles, I'm
3 managing all the sector chiefs, the U.S. Border Patrol
4 has 20 different sectors, one on them is New Orleans
5 Sector which covers basically the entire state of
6 Louisiana, a little bit into Mississippi. Looking at
7 the statistics, historically the statistics from that
8 sector and then having conversations with the chiefs of
9 those sectors as the illegal immigration increased to
10 the level it is today, there are direct impacts
11 because, back to the beginning, first off, nothing
12 stays at the border. Their main, Interstate 10 is a
13 main artery away from the border to other parts of the
14 country, the New Orleans Sector used to patrol very,
15 very heavily, and those resources, if for nothing else,
16 those resources have now been redirected. They're
17 being detailed to the southwest border and/or they're
18 doing virtual processing. So they're no longer doing
19 the law enforcement functions in the state of Louisiana
20 or many other places that they were doing before.

21 Additionally, nothing stays at the border.

1 So we have no idea once an individual is released into
2 the United States or once the 1.7 million illegal
3 aliens that made it past border patrol are illegal
4 entries, we have no idea exactly where they went. But
5 statically, I would believe, and this is my belief,
6 that some of them ended up in Louisiana. How many?
7 There's no way to track that.

8 Q. So when you say, and again, you say
9 colloquially, I know you didn't write this, but that
10 mass migration at the southwest border adversely
11 impacts Plaintiff states. Fair to say that you believe
12 it adversely impacts all states, that you're not
13 differentiating between any particular states with
14 respect to that statement?

15 A. Yes and no. I do believe it affects all
16 states. But specific to states that actually have
17 border patrol personnel assigned to them currently, and
18 that were fully and gainfully employed working within
19 that area, if that is not the southwest border now,
20 many of those resources have been pulled from doing law
21 enforcement functions within that state to help protect

1 that state and they have been reassigned to do
2 processing, care and feeding and/or -- it would be
3 nice, but they're not doing patrols, but they have been
4 reassigned to south Texas.

5 So even if they're physically in New
6 Orleans, the majority of their time is now dealing
7 directly with the mass cross border flow and they're no
8 longer helping to protect and secure the state of
9 Louisiana in a federal capacity. So I think it's both.
10 I'm sorry.

11 Q. You're fine. You had said at the beginning
12 that your answer had two components and one was the
13 statistics. Do you recall that?

14 A. Yeah.

15 Q. So let's talk about that second part. What
16 are the statistics to which you're referring?

17 A. So when I used it in general terms,
18 statistically how many illegal aliens end up in
19 different states. And again, depends on where you go
20 for that source of information. I would call that more
21 of an opinion sometimes than a fact. But

1 statistically, there are illegal aliens that have
2 crossed the border and families and relatives in almost
3 all states. And little bit outside of BP, but in
4 briefings that I was interacting with ICE and with HHS,
5 Health and Human Services, about unaccompanied migrants
6 and those aspects, where the families were, I can't
7 think of a single state where there weren't identified
8 illegal aliens.

9 So that's why I'm saying statistically I
10 think it involves every state, but specific to
11 Louisiana, they have lost the law enforcement
12 capability. Not just Louisiana. Florida can make the
13 arguments, some of the states in northern border can
14 make the same argument. Because the southwest border
15 has become the focus.

16 Q. Fair to say, once again, you can't trace
17 any of those effects, specifically the ones you have
18 spoke to about losing the law enforcement capabilities,
19 on any particular states to the Asylum Officer Role in
20 particular?

21 A. No, only as part of the scheme that the

1 Asylum Officer Rule is part of it.

2 Q. It says in the statement "adversely impacts
3 the Plaintiff states". Might there be states that
4 enjoy benefits from increased immigration, for example,
5 by filling critical labor shortages or from the receipt
6 of the payment of taxes, sales tax, property, income
7 taxes, et cetera?

8 A. I'm testifying to implications on border
9 security and basically my entire career has been border
10 security and the effects of immigration policies on
11 border security and our ability to know who and what is
12 entering our country. I'm not an economic expert. I'm
13 not going to testify on those aspects.

14 Q. When you're talking about the negative
15 impact, you're speaking specifically to border
16 security, not financial impacts that may or may not be
17 suffered or enjoyed by any particular state?

18 A. I'm not testifying to a balance of the pros
19 and cons. I just know the loss of the law enforcement
20 resources and then there are negative impacts with --
21 and again, this is my opinion now, there are negative

1 impacts with illegal immigration just like other people
2 would argue that there may be some positive impacts.
3 I'm not going to testify to that weight or that
4 balance.

5 Q. So, is it fair to say that you don't have
6 any firsthand knowledge of financial losses, alleged
7 financial losses sustained by any of the Plaintiffs
8 states as a result of the Asylum Officer Rule?

9 A. I don't have that information, no.

10 Q. Just give me a second. As I said, I told
11 you if you said you didn't know something, that might
12 cut out other questions.

13 A. That's fine.

14 Q. Did you conduct any tests or studies to
15 determine whether but for the Asylum Officer Rule, more
16 or fewer migrants would have sought to enter the
17 country unlawfully, as you used the word, unlawfully?

18 A. No, for two reasons: One, I was not
19 officially asked or allowed to add any real input into
20 this process. And then, again, carving out that one
21 specific action to have the numbers associated with it,

1 one, there are multiple other actions would be
2 challenging. I base my testimony on my experience and
3 watching the cause and effect of catch and release
4 policy in general.

5 Q. So I suppose it's fair to say from your
6 testimony today, you disagree with the immigration
7 policy choices of this administration? Is that
8 accurate?

9 A. I believe that the immigration policy
10 choices they have made have had a direct and
11 predictable consequence of a massive amount of illegal
12 immigration that has undermined the security of our
13 nation.

14 Q. And would it be fair to say that you
15 disagree with the policy choice to implement the IFR?

16 A. I disagree with the policy choice to
17 implement the IFR to the extent that it at least does
18 not include a detention aspect. It did not mitigate
19 the catch and release, that it made the catch and
20 release worse.

21 Q. But again, you don't have any statistics to

1 point to to that to show what the effects of the policy
2 have been in the real world?

3 A. Other than my 30 years of experience of
4 cause and effect, no.

5 Q. I notice on this disclosure, which is
6 intended to be subjects upon which Mr. Scott may
7 testify, there is -- there is no statement that the
8 Asylum Officer Rule has increased unlawful migration.
9 That's not there; right?

10 A. I did not include that in there, no. I
11 didn't ask for it to be included and I don't see it.

12 Q. Is that because that's not something that
13 you could creditably testify to for the reasons we have
14 discussed, that you can't discuss a single policy?

15 MR. ST. JOHN: Objection, asked and
16 answered.

17 Q. You can answer.

18 MR. BLOCK: Can you just rephrase the
19 question, sorry, just so we're familiar with what the
20 question was?

21 MS. FUDIM: Can the court reporter read

1 that one back?

2 (Court reporter read back question.)

3 A. I believe the Asylum Officer Rule plays an
4 important part in this bigger scheme. But specifically
5 the Asylum Officer Rule improves the speed or it
6 reduces the amount of time in custody that an alien
7 will spend, and then --

8 MR. BLOCK: Sorry. She put in the chat,
9 "can you repeat your objection?" I believe that's to
10 Scott.

11 MR. ST. JOHN: The question is vague and
12 it's been asked and answered.

13 MR. BLOCK: And question. We had a read
14 back of the question, I believe the objection was to
15 vague and asked and answered and now Chief Scott is
16 going to answer that question which I believe was about
17 the stats and --

18 A. So I believe that the Asylum Officer Rule
19 plays an important role in what resulted in
20 increased -- significant increase in cross border
21 illegal immigration. That, for a couple of reasons,

1 the speed of which people are potentially released into
2 the United States, the fact that any kind of a positive
3 determination in favor of the alien being released into
4 the United States does not get reviewed, only negative
5 findings get reviewed. And again, increases the
6 potential that they're going to be released. But it's
7 part of the larger scheme, that it's consistent with
8 the administration's public statements and all their
9 other actions that basically dramatically resulted in
10 what we see today, which is over 7,000 -- I'm sorry,
11 7 million illegal alien encounters since the Biden
12 Administration took over, which is unheard of, but ten
13 times worse than that is the 1.7 million known got
14 away in the hundreds of miles of border that are
15 completely unmanned.

16 I can't give you a number, ten, 20,
17 2 million, 3 million that are directly associated with
18 IFR, but I can tell you that the IFR and the way it was
19 rolled out and the process -- they're consistent with
20 the other discussions that I had with this
21 administration which were all focused on expediting the

1 processing, reducing detention, which was a stated
2 objective by this administration, and getting away from
3 detention, that has resulted in this massive increase
4 in illegal immigration. So from that aspect, I believe
5 it, there are stats. You just can't give it a specific
6 percentage, if you will. It's part of a bigger scheme,
7 same as I had mentioned earlier.

8 Q. Do you know what a counter factual study
9 is?

10 A. To a certain extent. I'm not an expert in
11 that area. But, yeah.

12 Q. What is your understanding of what it is?

13 A. That basically -- it's kind of
14 self-explanatory, it's a study that basically looks at
15 facts against your argument or against an issue to
16 argue from a different perspective.

17 Q. Did you conduct any studies to determine
18 whether migration patterns would have been different in
19 the absence of the IFR?

20 A. I retired in August 2021. The IFR came out
21 after I had already retired and there was no formal

1 inclusion of U.S. Border Patrol in that process. So I
2 was not even given the opportunity to do that. No, I
3 have not.

4 Q. What about since leaving border patrol?
5 Have you conducted any such studies?

6 A. No.

7 Q. Did you conduct any, and I assume the
8 answer to this is no since you said you didn't conduct
9 any such studies, but for the sake of the record, did
10 you conduct any studies comparing border patrol's
11 encounters of migrants affected by the rule compared to
12 border patrol's encounters of similar migrants who were
13 not affected by the rule?

14 A. No. I was already retired.

15 Q. You haven't done that since you retired
16 either?

17 A. No, I don't have access to those
18 statistics.

19 Q. You've testified in front of Congress a
20 number of times; correct?

21 A. Correct.

1 Q. And have you ever provided testimony on the
2 subject of the IFR? I will tell you I listened to a
3 lot of your testimony and I didn't hear any, but I
4 can't purport to have listened to all of it. So let me
5 ask you that. Have you ever given congressional
6 testimony on the subject of the IFR?

7 A. No, I have not.

8 MR. BLOCK: I was just going to say, as a
9 point of clarification, do you mean in the written
10 remarks or do you also mean any kind of question from
11 any members?

12 Q. I mean in response to any questions or in
13 written remarks, either way, to Congress. Have you
14 ever provided testimony on the IFR?

15 A. So, no. And for clarity's sake, the IFR
16 specifically was not a subject of any of the testimony
17 that I provided nor was I asked specifically, to my
18 recollection in any way, by any members' questions
19 directly relating to the IFR. They were more general
20 border security context.

21 MS. FUDIM: Okay. I think that that's all

1 I have, but I want to just take a minute to review my
2 notes and confer with my co-counsel who have been
3 visibly listening in to see if I have goofed along the
4 way and completely missed anything. So if we could
5 just take a five minute break, it's 12:27, can we say
6 like 1:05?

7 MR. BLOCK: Thirty-five?

8 MS. FUDIM: Yes. Thirty-five, yes.

9 MR. BLOCK: That works. That works.

10 (Whereupon a brief recess was taken.)

11 MS. FUDIM: That's all the questions I have
12 for now, subject to whether plaintiff's counsel or your
13 own attorney have any follow-up questions that they
14 want to ask.

15 THE WITNESS: Thank you.

16 MR. ST. JOHN: I would like to ask a few
17 questions.

18 EXAMINATION BY MR. ST. JOHN:

19 Q. Chief Scott, I apologize for the voice
20 problems, do you understand me?

21 A. Sure. I taught maybe it was just your

1 normal voice.

2 Q. Sir, you served as the border patrol chief
3 from February of 2020 to August of 2021; correct?

4 A. That is correct.

5 Q. Under the previous and the Biden
6 Administrations?

7 A. Yes, both administrations.

8 Q. How many agents did you have under your
9 command?

10 A. It fluctuated. There were about 19,500
11 plus agents and then just short of another 3,000
12 mission support personnel and civilian personnel.

13 Q. So your job was not to total wrap them in
14 handcuffs down on the border? Is that fair to say?

15 A. That's fair to say, it's basically like CEO
16 of a company, all aspects of the organization, but
17 unfortunately not the enforcement part.

18 Q. You relied on the men and women working for
19 you to execute your directives?

20 A. That is correct. I had a significant
21 leadership team of, I think a total of about 350 people

1 in Washington, D.C. that I worked directly through to
2 get all the policies implemented out in the field and
3 to run the organization.

4 Q. On the flip side when your subordinates
5 reported back that they had executed your directives,
6 you trusted that they had; is that fair?

7 A. Yes, that's fair.

8 Q. Is it fair to say that Customs and Border
9 Protection generally, and the Border Patrol
10 specifically, is the expert agency on border security?

11 A. I believe it is. It's the only agency
12 that --

13 MS. FUDIM: Objection.

14 Q. You can answer.

15 A. I believe it is. It's the only agency
16 that's on the front line that's been doing this job day
17 in and day out. For example, myself, I had just under
18 30 years of experience when I retired. But there are
19 other individuals that have been doing it far longer
20 than I have. Nobody else has that experience outside
21 of the U.S. Border Patrol.

1 Q. Based on that, it's fair to say USCIS is
2 not an expert agency on border security?

3 MS. FUDIM: Objection.

4 A. I would agree with that statement. Border
5 patrol's job is literally physical border security, CIS
6 was more the immigration policy, immigration
7 implementation side, but they had nothing to do with
8 actually patrolling the border.

9 Q. Likewise, the Executive Office for
10 Immigration Review, EOIR, is not an expert agency on
11 border security; is that correct?

12 A. I believe that's correct.

13 Q. Are you familiar with a woman named Ur
14 Jaddou?

15 A. No, I'm not.

16 Q. Are you familiar with the terms push and
17 pull in the context of border control?

18 A. Yes, I am.

19 Q. What is a pull factor?

20 A. A pull factor is anything that encourages
21 migration in a bigger context, but specifically the

1 border security, illegal immigration into the United
2 States. So it could be, the opportunity to have jobs
3 or to perceived ease to get into the United States or
4 the lack -- it's basically a balance of, you know, good
5 factors or bad factors for the individual. When the
6 factors outweigh -- the good factors to come to the US
7 outweigh the negative factors, that's a pull factor.

8 Q. You indicated that the border patrol or you
9 based on your experience should evaluate generally
10 whether a policy would be a pull factor; is that
11 correct?

12 A. That is correct.

13 Q. Is that based on the pattern responses over
14 decades of experience with migration?

15 A. That is accurate, and that's irregardless
16 of any political party and it's beyond my personal
17 experience, it's the experience of the U.S. Border
18 Patrol. There are certain things you can draw a direct
19 correlation to, and specifically to this context, any
20 time people are released in the United States after
21 they were encountered by border patrol or Customs and

1 Border Protection when they arrived without
2 documentation, there is always a significant increase
3 in the illegal cross border of future people within
4 that same group or class.

5 Q. Is it possible to forecast actual border
6 flow months or years into the future?

7 A. Absolutely not. And --

8 MS. FUDIM: Objection.

9 A. So from my personal experience, absolutely
10 not. You talked about the pull factors, and the pull
11 factors are by definition things within the geographic
12 borders of the United States. So there are things we
13 can control. The push factors are things that happen
14 geographically outside the boundaries of the United
15 States. So we may potentially be able to influence
16 those, but we cannot control those in any way. And
17 because of the uncontrollable aspects of those push
18 factors, it makes it extremely difficult to predict
19 what will happen illegal immigration-wise in the future
20 assuming that the pull factors remain consistent.

21 Q. Is it fair to say the weight of the push

1 and the pull can affect flow? So you might have a
2 strong push factor and a weak pull or you might have a
3 strong pull and a weak push might yield generally the
4 same result?

5 A. I would agree, and that's a big part, as
6 chief of the board patrol, that's where policy comes
7 in. That's a big part of the discussions we have on
8 how to control the border. It was a constant effort to
9 manage those push pull factors so that the pull factors
10 were not significantly below the push factors because
11 there's always going to be another earthquake, there's
12 always going to be a country around the world in
13 crisis. We know we can't control that. So we have to
14 make sure that the consequences for illegal entry
15 outweigh the potential benefit of somebody trying to
16 come in. And that's literally what the job of border
17 patrol and Customs and Border Protection, really DHS is
18 all the time, to protect the country.

19 Q. So let me ask it this way: You can have a
20 policy that's a very, very strong pull factor, but if
21 for whatever reason, a push factor went to zero, you

1 could actually have in theory a decrease in migration
2 flow? Is that fair?

3 MS. FUDIM: Objection, form.

4 A. I would argue, in theory, yes. But it's
5 just that, in theory. The world is so big that there's
6 never no push factors. Like that's never existed since
7 the United States has been in existence.

8 Q. Push factors could be very small, and the
9 point I'm trying to get at is -- the factors work
10 together to yield a flow, but you can't say oh, this
11 push and this pull is going to yield an increase of
12 10,000? It just doesn't work like that?

13 A. I agree.

14 Q. Former border patrol Chief Raul Ortiz, I'll
15 represent he testified that migrants follow social
16 media and are aware of postings. Is that consistent
17 with your experience?

18 A. Yes.

19 Q. Underlying theme in everything that you
20 said, and I just want to make sure we're capturing it,
21 is that migrants are rational actors in the sense that

1 they respond to information, if there is a gap in the
2 border, they're going to flow into it. Is that fair?

3 A. That is fair. And just to build on that a
4 little bit, I think I touched on this before, but I
5 want to be clear, regardless of any outside factors,
6 human nature as rational human beings, they communicate
7 with their friends and family, whether it be social
8 media or anything else, and the social media aspect has
9 made it immediate where early in my career this exact
10 same thing, I want to explain, happened, but it took
11 place via letter that took weeks, sometimes months
12 depending on where people came from to get the message
13 back. But today that message is immediate. So the
14 minute that someone is released into the United States,
15 they do the exact same thing, and I'm not saying
16 everybody, but human nature, that you or I would do,
17 and that's simply just call home and let their friends
18 and relatives know what happened. Rarely do they
19 understand the full process. They just understand that
20 they have been released into the United States. That
21 becomes a huge pull factor immediately, that then has

1 cascading effects as each one of those calls go out and
2 that's what we're seeing today.

3 Q. Do human traffickers respond to information
4 in a similar manner?

5 A. Correct. Although, you add a factor there
6 that part of their business model is encouraging people
7 to come to the border. So regardless of factual
8 information, nonfactual, they're constantly trying to
9 convince people to come to the border for two reasons.

10 One, they make money off of them. But,
11 again, as I tried to explain earlier, the border has
12 changed over the years and the cartel, Mexican cartel
13 specifically now controls the entire southwest border.
14 And they not only use the illegal migrant flows to make
15 money off of, to smuggle them, more importantly, they
16 use them to overwhelm law enforcement as a operational
17 tool, as a tactical tool. If you were in the military
18 you'd call it shaping the battle, environment, or
19 shaping the environment. So they are constantly
20 recruiting people to come to the border with or without
21 the additional negative factor of the pull factors that

1 are created here.

2 Q. I don't want to mischaracterize your
3 testimony, but I think you testified that an increased
4 likelihood of release into the interior of United
5 States instead of being detained, that is a pull
6 factor; is that correct?

7 A. In my experience and in the testimony of
8 numerous other border security experts from ICE, from
9 Legacy Immigration and border control, specifically my
10 testimony, that is the number one factor. The number
11 one controllable factor is the likelihood of being
12 released into the United States.

13 Q. In your experience, or to your knowledge,
14 your expertise, is the availability of employment a
15 pull factor?

16 A. The availability of employment is a pull
17 factor.

18 Q. Do you think the availability of legal
19 employment, so employment authorization, is that a pull
20 factor?

21 A. I believe it is a pull factor. In my

1 experience, border security specifically, again, legal
2 work or illegal work are both pull factors, but the
3 ability to get legal employment or any type of legal
4 document to move about the United States is a
5 significant -- is very, very significant pull factor.

6 Q. Are you familiar with the immigration law
7 concept of follow to join --

8 A. I don't think I heard you.

9 Q. Are you familiar with the concept of follow
10 to join in the immigration law?

11 A. I'm not familiar with that specific term,
12 no. Are you talking about like chain migration or
13 family reunification follow to join? Okay. So, I saw
14 him shake his head for the record, yes. I am very,
15 very familiar with that and it's both in immigration
16 law and in national human nature. But the way our laws
17 are set up, we focus legal immigration on what we would
18 call chain migration, the ability to sponsor others.
19 But in the illegal arena, it's very, very consistent
20 with my experience that whatever current loopholes
21 there are in immigration law, the family member that is

1 best situated for that will actually be the first one
2 to come into the United States.

3 For example, when Title 42 was fully -- was
4 still fully employed and then this administration
5 arbitrarily decided to exempt juveniles, we saw
6 significant increase in unaccompanied minors coming
7 into the United States, and then based on my
8 experience, the rest of the family would try to cross
9 illegally to meet up with them later. Sometimes
10 before, but in that case, now. The same thing would be
11 here, whoever met any of the loopholes would come first
12 and then the rest of the family after that individual
13 was situated would come later. And I would just argue
14 again, it's normal human behavior.

15 Q. You mentioned the context of legal
16 immigration. Follow to join. Would that incentivize,
17 the availability of that, if someone can legalize their
18 presence, does that incentivize greater flow because
19 they're going to bring their children or their wife and
20 so on and so forth?

21 MS. FUDIM: Objection.

1 A. From my experience, and when I say
2 experience, my firsthand experience living along the
3 border, even before I was in the border patrol, my
4 experience in the border patrol and then the lessons
5 handed down by leadership before, I would say that
6 the -- in 1986, when we did the amnesty, that was a
7 perfect example that, yes, it does. And any
8 discussion, any time there has been a discussion about
9 amnesty or legalizing people that are already in the
10 United States so that then they could potentially avail
11 themselves to the legal immigration processes later.
12 Again, there has been a systematic increase in illegal
13 cross border activity and the false doc industry has
14 boomed as well. Again, this is what I talk about. You
15 can't carve out one specific policy very often because
16 too many factors happen at the exact same time. But,
17 yes.

18 Q. Rewinding a little bit. You talked about,
19 or you testified about how it was the phone call that
20 this is what I experienced is how it's communicated.
21 Something like that. It's a very course level of

1 communication between the migrant in the United States
2 and whoever is remaining in their home country. It's
3 course. It's simplistic. Is that a fair summary of
4 what you testified?

5 MS. FUDIM: Objection to form.

6 A. Yes. So, yes, my testimony is really that
7 it's fast and it's simple. It's not that it's just
8 phone, but that it's because of modern technology and
9 the fact that international calls are so much cheaper
10 than they used to be, it's all aspects. I would argue
11 the quickest is usually the messaging apps, but it
12 incorporates phone calls, it incorporates Facebook
13 Messaging. But the messages are faster than ever
14 before and the messages are pretty consistent. It's
15 just updating people that they made it, they made it
16 here safe, and then, yes.

17 Q. So let me offer you another hypothetical.
18 You said fast and simple. If a pull factor were only
19 available to a tiny subset of migrants, say one in a
20 thousand, it would probably be irrelevant or nearly
21 irrelevant to the overall flow. Is that a fair

1 assumption?

2 MS. FUDIM: Objection to form.

3 A. I believe that is a fair assumption with
4 adding one aspect to it, the marketing piece of it.
5 So, depending on how, are there other avenues that the
6 message is going out? If there's not like a DHS
7 campaign, you know, talking about something, or where
8 there's clear, like people of authority pushing
9 something, without that extra aspect, the lower the
10 numbers, I think it's again common sense, that the
11 lower response or the lower the pull factor would be.

12 Q. To your knowledge, has the Biden
13 Administration reduced detention capacity for illegal
14 aliens?

15 A. Yes, and again I believe the public record
16 based on appropriation requests and actual size, some
17 of the testimony in Congress, public record is they
18 have decreased detention capability across the border.

19 Q. Are you familiar with the reprogram --

20 A. I heard part of that and then, no offense,
21 the cough, I missed the middle, I just want to make

1 sure it's clear.

2 Q. Are you familiar with the budgetary term
3 reprogramming?

4 A. Yes, I am.

5 Q. What is reprogramming?

6 A. A reprogram is when basically a component
7 like CBP or DHS takes money that was intended for one
8 specific function that Congress usually delineates the
9 money and then you take it out of that function and you
10 move it to something else. For example, from
11 enforcement over to personnel, for example,
12 potentially, or from data technology to soft-sided
13 facilities, would many times require some type of a
14 reprogram.

15 Q. Did the Trump Administration reprogram
16 funds to expand detention capacity when necessary to do
17 so?

18 A. That was outside my specific scope. But my
19 general knowledge is, yes.

20 Q. In your opinion, based on your 29 years of
21 experience in the border patrol, is the impact of an

1 immigration related policy on border flow an important
2 aspect of the problem that a policy must address?

3 A. I believe it's a critical aspect. The
4 second and third level effects many times outweigh the
5 initial intent or the objective and I think that's the
6 concept behind making sure everybody is involved in the
7 conversation. So, yes.

8 Q. You testified a little bit about the impact
9 to states. In your opinion, based on your 29 years of
10 experience in the border patrol, is impact of an
11 immigration related policy on states an important
12 aspect of the problem a policy must address?

13 MS. FUDIM: Objection.

14 A. Based on my experience, yes, it is. And as
15 a federal entity responsible for basically immigration
16 policy and border security, by definition, is deciding
17 and controlling who and what can come into the entire
18 United States, by default, it always affects a state
19 and, therefore, must be or should be considered.

20 Q. Somebody has to enforce the law; correct?

21 A. Correct, somebody has to enforce the law

1 and then there is always, whether they're good or bad,
2 and I'll stay out of the balance, there's always
3 negative factors to increasing populations in areas,
4 legal or illegal, but legal obviously was outside my
5 scope as U.S. Border Patrol, illegal was my job to
6 basically try to minimize that population set.
7 Statistically you're going to have, other than the
8 initial cross border violation, you're going to have
9 people that maybe just want to go to work, but you're
10 also going to have criminals and everything else. That
11 is going to be an effect.

12 Q. Somebody is going to have to educate the
13 kids and somebody is going to have to take care of
14 health problems?

15 A. Correct.

16 Q. The Asylum rule preamble states that "it is
17 not expected to create any significant new incentives
18 that would drive increase to regular migration". Based
19 on your 29 years of experience in the border patrol, is
20 that contention plausible?

21 A. No. And I have direct information from one

1 of my staff that, again, not a formal setting, but in
2 an informal setting, told political appointees, part of
3 this administration, the exact opposite, that it would
4 undoubtedly result in an increase in cross border
5 illegal flow.

6 Q. Is that contention so implausible that it's
7 not just a difference of view, it's the professional
8 advice would be the Asylum Rule will drive increase to
9 regular migration?

10 MS. FUDIM: Objection to form.

11 A. I believe it's implausible and no one
12 that's ever been involved in border security can
13 consciously and knowingly make that statement. Yet
14 there were people in this current administration that
15 had been in prior administrations and made the exact
16 opposite statements. They acknowledge that anything
17 that results in catch and release would directly impact
18 illegal cross border flow. That they called it
19 irregular migration.

20 Q. I want to draw your attention to a
21 different statement in the Asylum Rule preamble, it

1 states that "the defendants did not, quote, expect this
2 rule to encourage or cause an increase in number of
3 individuals seeking asylum in the United States."
4 Based on your 29 years of experience in the border
5 patrol, is that contention plausible?

6 A. I do not believe that's plausible.

7 MS. FUDIM: Objection.

8 THE WITNESS: Oh, sorry.

9 MS. FUDIM: It's okay.

10 Q. Concerning statistics, you mentioned got
11 away. What is a got away?

12 A. So got away, the term got away is used kind
13 of generally by the public, but it is used specifically
14 within United States Border Patrol in two ways: A got
15 away is not a term border patrol uses officially.
16 Known got aways is the term that U.S. Border Patrol
17 uses officially. A known got away, there is actually a
18 policy within Customs and Border Protection within U.S.
19 Border Patrol that defines the criteria that have to
20 take place before a known got away can be put into the
21 system.

1 But basically that means we have evidence
2 of an illegal crossing, it's either by video, for
3 example, a sensor went off, agents actually saw them,
4 footprints on the ground, vehicle tire prints,
5 whatever, there's evidence of that illegal crossing,
6 verified, but there were no agents available to respond
7 and effect an interdiction. So they literally got
8 away. But I want to make sure we caveat this. This
9 has actually kind of have been reported to Congress
10 quietly for years because of what is called an
11 effectiveness ratio that Congress mandated border
12 patrol to report when I was still in field leadership
13 years ago and we had to report how effective or just a
14 percentage. By default, that made us start tracking
15 got aways.

16 But the system that I helped roll out that
17 we talked about earlier in San Diego called tracking,
18 sign cutting and modeling improved the integrity of all
19 that data to the point where in the last
20 administration, during the Trump Administration we were
21 starting to talk about it publicly and explain to

1 people what it meant. But it's confused many, many
2 times in the public with this general like estimate of
3 got aways. It has nothing to do with an estimate
4 whatsoever. That 1.7 million that the border patrol
5 reported out through court documents and through
6 testimony, those are known verified got aways that
7 crossed the border illegally and got away from the
8 border patrol. I just want to make sure that we know
9 we're not talking about any kind of estimate, it's
10 based on fact and evidence.

11 Q. That's what I wanted to ask you about
12 specifically. At one point this morning you testified
13 that "things get missed" when agents get pulled off the
14 border. So, if you are pulling agents off the border,
15 they're not going to see those footprints and the got
16 away count will be progressively lower even though the
17 actual count may be increased?

18 A. That is factual and it also depends on the
19 areas. So, certain parts of the southwest border, say
20 San Diego Sector, El Paso, closer to a port of entry in
21 an urban area, we will have -- we'll usually have

1 cameras and some sensor systems. But there are many,
2 many areas along the southwest border where there is no
3 persistent surveillance whatsoever. For example, I'll
4 use south Texas. The river is a very challenging
5 environment to work because of the Carizzo Cane,
6 creates cover and the river has so many bends in it.
7 We have aerostats which is basically like a hot air
8 balloon with a camera system looking down. That's what
9 would have been recording any kind of cross border
10 illegal activity in that area. And then border patrol,
11 if they documented something and they missed it, then
12 that will be the got away.

13 Unfortunately, funding for those aerostats
14 got reappropriated to soft-sided facilities to set up
15 these processing centers to expedite the processing of
16 migrants already in custody and only a couple of those
17 aerostats are down now. So those areas specifically
18 without a patrol will have no idea what crossed the
19 border.

20 The Big Bend Sector is extremely remote,
21 but has a lot of illegal activity. Similar. And then

1 unfortunately even in southern Arizona, if you have
2 been watching anything lately, areas where we built the
3 new border wall, the state was shut off, the
4 construction process was shut off midstream and the
5 technology and sensor package that was going in with
6 that wall system got shut off. So we are blind in many
7 of those areas as well.

8 Q. You just used the word reappropriated.
9 With respect to aerostats, was the funding
10 reappropriated or was it reprogrammed?

11 A. I believe the funding was reprogrammed.
12 Sorry. Reprogrammed.

13 Q. So at the political level, the Biden
14 Administration took that funding away from the
15 aerostats observing the border and diverted it to a
16 different use?

17 A. Correct, and again, I believe there is
18 plenty of public statements on record of this. The
19 Biden Administration from day one, even before, was
20 very vocal, they wanted to shut down the border
21 infrastructure construction projects to include the

1 border wall and they wanted to prioritize the
2 processing, and I mentioned earlier, they wanted to
3 create what they call these welcome centers.

4 We didn't have enough money for all that,
5 and as the flow increased significantly, money was
6 constantly being reprogrammed or even just diverted
7 internally. The reprogramming is a very formal process
8 to move money from one account to another and there's
9 still latitude within CBP if money fits in to a bigger
10 realm, if you will, to be able to move it internally.
11 Before we did any reprogramming, we basically
12 completely exhausted all of our funds internally and I
13 had actually started spending salary money to pay for
14 the soft-sided facilities before I even retired as
15 chief and then money had to be reprogrammed to backfill
16 that salary deficit.

17 MR. ST. JOHN: I e-mailed everyone a couple
18 of documents. Are you able to pull those up, Mr. Block
19 and Ms. Fudim?

20 MR. BLOCK: Yeah. Give me two seconds
21 here.

1 MS. FUDIM: I am. I will say that I'm
2 going to record an objection, I'm not suggesting that
3 Mr. Scott not testify because we're here, but I'm just
4 going to note an objection for the record that the Memo
5 of Understanding, which is attached to your e-mail,
6 subject matter of it as well as a lot of the questions
7 that have been posed to Mr. Scott in the last 20 or so
8 minutes fall outside the list of subject matters on the
9 Scott disclosure, and for that reason, I object.
10 Though my objection is not going to be to seek to
11 preclude him to testify. I'm just noting that for the
12 record.

13 MR. ST. JOHN: The state's position is that
14 the federal government elicited testimony on these
15 topics and we're entitled to delve into them on top of
16 what we believe they are fairly within the scope of his
17 disclosure. So I think we're up to Exhibit D, let's
18 mark the Memorandum of Understanding as D.

19 MR. BLOCK: I think it will be C. I don't
20 know what otherwise C would have been.

21 MS. FUDIM: I agree.

1 (Deposition Exhibit C was marked for
2 purposes of identification.)

3 Q. My apologies. So the MOU will be Exhibit
4 C. Chief Scott, are you aware that certain states
5 entered a Memorandum of understanding with DHS toward
6 the end of the Trump Administration?

7 A. I'm generally aware, yes.

8 Q. For the record, this is a document that was
9 filed in docket 1-2, it's an MOU between the DHS and
10 the state of Louisiana -- or the Louisiana Department
11 of Justice. I'd like to scroll down to Roman numeral
12 two, it's on the bottom of page two, and extends onto
13 page three. Take a couple of minutes and read through
14 that.

15 MR. BLOCK: Read through to where, Scott?

16 MR. ST. JOHN: The bottom, I think it's
17 bullets one through nine on the top of page three.

18 A. I read through bullet nine.

19 Q. As you already testified, but to make a
20 clear record, do you agree that states and
21 municipalities are directly and concretely affected by

1 changes to policies that have the effect of easing or
2 relaxing or limiting immigration enforcement?

3 A. Yes, with the caveat that they -- that
4 federal government's enforcement and policies affect
5 both negative and positive potentially, but they
6 directly affect the states. Now, I'll also just add to
7 that, beyond my testimony, it's very consistent, we had
8 an Office of State and Liaison. As chief of the border
9 patrol, I had continual conversations with state and
10 local sheriffs and state and local officials to remain
11 aware of their input. So it seems very consistent with
12 that as well.

13 Q. Some of the things that were specifically
14 called out in the bullet points as affecting states
15 would be a decrease of immigration enforcement
16 priorities. Would you agree that that can adversely
17 affect states or affect states?

18 A. Yes.

19 Q. Would you agree that a reduction in the
20 number of DHS agents performing immigration enforcement
21 functions can impact states?

1 A. Yes.

2 Q. Would you agree that a decrease or pause on
3 return to removables -- of removable or inadmissible
4 aliens can adversely impact states?

5 A. Yes, I do.

6 Q. Would you agree that a decrease or pause on
7 apprehensions or administrative arrests can adversely
8 impact states?

9 A. Yes.

10 Q. Would you agree that a relaxation of the
11 standards for granting release from return or removal
12 such as asylum can adversely impact states?

13 A. Yes, it definitely, yes.

14 Q. Would you agree that an increase in
15 releases from detention can adversely impact states?

16 A. Yes.

17 Q. Would you agree that a relaxation of the
18 standards for granting release from detention can
19 adversely impact states?

20 A. Yes.

21 Q. Would you agree that changes to immigration

1 benefits or eligibility, including work authorization
2 or discretionary actions, can adversely impact states?

3 A. Yes.

4 (Deposition Exhibit D was marked for
5 purposes of identification.)

6 Q. Let's turn to, there was an additional
7 document, we'll mark it as Exhibit D, it's a biography
8 I think you attached to one of your congressional
9 testimonies. Can you confirm that Exhibit D is an
10 accurate accounting of your biography?

11 A. Yes. I did not just read the whole thing,
12 but it appears it is the document that I did provide
13 and publish. So as long as it has not been edited,
14 it's an accurate account. Looks like a PDF so it
15 shouldn't have been edited. Would you like me to read
16 it?

17 Q. My apologies, Chief.

18 A. I was just asking if you just wanted me to
19 look at, glance or if you wanted me to read it, make
20 sure there's no edits. It's a synopsis and it looks
21 accurate. It looks like the one I wrote.

1 Q. You're here today to testify pursuant to
2 subpoena issued by the federal --

3 A. Correct.

4 (Deposition Exhibit E was marked for
5 purposes of identification.)

6 Q. I'm going to ask the court reporter to mark
7 the subpoena as Exhibit E. You reside in Oklahoma; is
8 that correct, Chief?

9 A. That is correct.

10 Q. Chief Scott, you do not reside in
11 Louisiana; is that correct?

12 A. I do not reside in Louisiana, no.

13 Q. You don't regularly do business in
14 Louisiana; is that correct?

15 A. That is correct. I have never resided in
16 Louisiana.

17 MR. ST. JOHN: No further questions from
18 the state.

19 MS. FUDIM: I have some additional
20 questions, but, Mr. Block, I don't know if you'd like
21 to have, if you have any questions, you'd like to go

1 first.

2 MR. BLOCK: Yeah. If you don't mind.

3 Thank you. Just a few questions based on some of the
4 questions that have been asked and mostly for
5 clarification.

6 EXAMINATION BY MR. BLOCK:

7 Q. Chief Scott, you referenced at one point
8 during the government's or I guess -- government, the
9 defendant's questioning about a blue sheet and the exec
10 sec. What is the exec sec? Can you explain that
11 process?

12 A. I apologize. Yes.

13 MS. FUDIM: Objection. I think you said in
14 response to defendant's questioning, I think you meant
15 plaintiff's questioning.

16 MR. BLOCK: No, I meant yours.

17 MS. FUDIM: Can you rephrase it because I'm
18 not sure, I don't remember asking?

19 MR. BLOCK: In one of his answers, he
20 talked about exec sec and blue sheet.

21 MS. FUDIM: Oh, in the answer.

1 MR. BLOCK: In the answer, it was kind of
2 just a glancing touch on it. So I just wanted him to
3 explain what exec sec is.

4 A. Sure. So exec sec is an executive
5 secretary, is what it stands for, but it's basically a
6 very administrative process within DHS to make sure
7 that things are done and done properly. So it's, in
8 it's most rudimentary form it's like document tracking,
9 but it also makes sure you get proper input. So if
10 something comes from the White House, for example, like
11 a policy or idea, anything being reviewed, it goes from
12 like White House exec sec to DHS's exec sec and then it
13 gets farmed out, if you will, to make sure they get
14 proper input from anybody who would be affected by
15 whatever that document is or whatever that policy is.

16 When it comes to CBP, we have CBP exec sec,
17 but there it gets a blue sheet, literally, put on top
18 of it, and the blue sheet, similar to other agencies,
19 has boxes on it for the chief, executive commissioner,
20 field operations, the key leadership, and then it's
21 basically asking you to review whatever that is and you

1 can concur with it, or if you're not going to concur
2 with it, then you have to actually say I do not agree,
3 I don't concur, and then you have to provide a written
4 explanation that -- then higher up, all the way to the
5 secretary or the White House, potentially, they can
6 take your advice or leave it. That's still up to them?

7 But the exec sec process is a very
8 systematic bureaucratic process to make sure that we
9 can document all the work that is going on within DHS
10 and who had an opportunity to see what, what did they
11 say to document functions of the federal government.

12 Q. Did you see in your time as border patrol
13 chief a blue sheet or exec sec process of the Asylum
14 rule?

15 A. No, I did not. I actually asked my prior
16 deputy chief, because I'm a little worried -- as the
17 chief of the border patrol, 20,000 people, I travel, so
18 I'm not sitting in that office every single day. So I
19 asked my deputy chief at the time, Raul Ortiz, if he
20 saw it in my absence. He's now retired as well and he
21 said no. He did not see it either.

1 Q. Would you consider the Asylum rule we're
2 discussing today a push or a pull factor?

3 A. It's a pull factor.

4 Q. Why?

5 A. It's a pull factor because it speeds up --
6 it shortens the amount of time to have somebody
7 released into the United States. It also increases the
8 likelihood of somebody being released into the United
9 States because the asylum officer is making the entire
10 adjudication process now. If they can say yes, with no
11 review, if they say no, it still delays it and it goes
12 to an immigration judge.

13 But definition, it will speed up how
14 quickly people are released into the United States.

15 Q. To your knowledge, did the Biden
16 Administration seek the advice of career border control
17 on the impact of the IFR?

18 A. No, it did not.

19 MR. BLOCK: No further questions.

20 MS. FUDIM: Okay. I have some.

21 EXAMINATION BY MS. FUDIM:

1 Q. Turning your attention back to the
2 Memorandum of Understanding that I believe was marked
3 as Exhibit C by Mr. St. John, this was a Memo of
4 Understanding that was terminated in 2001 after a
5 waiting period; is that correct?

6 A. I'm not familiar with the termination
7 process.

8 Q. Do you believe -- I'm sorry. I
9 interrupted. Go ahead.

10 A. I was just going to explain, my role was
11 not in that administrative aspect of this.

12 Q. When you say you're not familiar with the
13 termination process, does that mean that you're not
14 aware that this agreement was terminated at all or
15 you're just not aware of the timing of the
16 determination?

17 A. Either one. I was not, just to clarify,
18 just so it's clear for you, I was not familiar with the
19 specific termination. I only read the aspects of the
20 memo that we just now talked about. Nor am I familiar
21 with any type of a specific automatic termination

1 period. Like administrative or otherwise.

2 Q. I just saw a comment popped up, I just want
3 to make sure it's nothing critical. Okay.

4 MR. BLOCK: I think Scott, his phone
5 dropped, I believe, is what it would look like, and he
6 was participating via -- he was talking via telephone.

7 MS. FUDIM: Right.

8 MR. BLOCK: I think if you go to the
9 settings into your audio settings, it would be
10 participate by phone or call me maybe.

11 MR. ST. JOHN: This is Scott, I lagged.
12 I'm back.

13 MR. BLOCK: You were asking about the MOU
14 and about the termination process.

15 MS. FUDIM: Yes. Let me just get my
16 bearings for a second.

17 Q. So, is it correct that you're not aware
18 that this Memorandum of Understanding was terminated
19 prior to the promulgation of the IFR?

20 A. No, I was not aware.

21 Q. Certainly you would agree with me that

1 there's no reference to the Asylum Officer Rule in this
2 Memorandum of Understanding; correct?

3 A. The document doesn't -- the document from
4 what I just reviewed doesn't identify any specific
5 program, it's more generalities. So, in that context,
6 it does not, to my knowledge, specifically identify the
7 IFR rule.

8 Q. If it was created before the IFR rule, it
9 necessarily couldn't; right?

10 A. I think that's why -- so, yes. I don't
11 want to speculate.

12 Q. Do you know who on behalf of the federal
13 government put together or negotiated this Memo of
14 Understanding to the state of Louisiana?

15 A. Specifically, no. But in -- I know Ken
16 Cuccinelli, and in his time, he was the acting deputy
17 secretary of DHS, when he signed it, he might have been
18 acting. But this doesn't surprise me. I just want to
19 caveat because the engagement was state and locals was
20 always being pushed as a huge priority regardless of
21 the IFR or anything else and to making sure that we

1 always worked as a team. You'll hear conversations
2 that the border security is a team effort, it's a
3 coalition of government, federal government, you'll
4 always hear these concepts. So nothing in this
5 document is like outside the context of that
6 conversation. But I do not know the specific
7 individuals that would have done it, but it would have
8 been through that office of state and local liaison and
9 then DHS HKU traditionally.

10 Q. You weren't a party to that though?

11 A. No, I would be brought in as the chief,
12 having conversations, they would host, and when I say
13 host, the Office of State and Local Affairs, we would
14 routinely host conference calls, video conferences like
15 this, with different states, and have these
16 conversations, but then similar to most other policies
17 and rules, the pen to paper agreements, MOUs, stuff
18 like that, after that input, that would be done through
19 the state and local office or the DHS secretary's
20 office, more administratively.

21 Q. You mentioned a moment ago in response to a

1 question by Mr. Block that you would categorize the
2 Asylum Officer Rule as a pull factor because it
3 increases the likelihood of releases. Do you recall
4 that testimony?

5 A. Yes.

6 Q. You have no data to point to to show that
7 it actually has increased the number of individuals who
8 have been released into the country; do you?

9 A. I retired. I do not have access to that
10 data.

11 Q. So that's a no?

12 A. I'm testifying off of my 30 years of
13 experience of cause and effect of any policy that does
14 increase and then how this one works, the likelihood
15 that more people are going to be released. But I don't
16 have access to CBP or DOJ data anymore. So I cannot
17 testify to a specific number.

18 Q. So if it were the case that it had not
19 increased the number of, individuals released into the
20 country had not increased the number of asylum awards,
21 would that affect the opinions that you offered today

1 with respect to the Asylum Officer Rule being a pull
2 factor?

3 A. I always smile and hesitate because of the
4 what ifs. That's inconsistent with my experience with
5 that process. But, if anything, and consistent with my
6 testimony, but if any decision actually resulted in a
7 decrease of people being released into the United
8 States, that's fewer people calling back home, that
9 usually has a positive effect, meaning slowing down
10 cross border illegal activity. But I'm not comfortable
11 testifying to a what if without looking at the specific
12 data because it just doesn't seem consistent with my
13 experience that this rule would change 30 years of
14 experience and all of a sudden have less people being
15 released instead of more with less adjudication.

16 Q. Your testimony with respect to the effects
17 of the Asylum IFR or the probable effects of the Asylum
18 IFR are based on your experience in border patrol and
19 other policies rather than with respect to actual data
20 with respect to the implementation of the rule; is that
21 accurate?

1 A. I believe that is accurate. It's compiled
2 over my career, various policies and how that affected
3 border security and then comparing this one to it. As
4 I stated earlier, based on my retirement date and lack
5 of specific data, I don't have that micro tactical
6 information that you alluded to.

7 MS. FUDIM: I have nothing further. I
8 guess that that's it. I thank you for your time, Chief
9 Scott.

10 THE WITNESS: Thank you.

11 (Deposition concluded at 1:28 p.m.)
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1 State of Maryland


2 City of Baltimore, to wit:

3 I, Louisa B. McIntire-Brooks, a Notary
4 Public of the State of Maryland, County of Anne
5 Arundel, do hereby certify that the within-named
6 witness personally appeared before me at the time
7 and place herein set out, and after having been duly
8 sworn by me, according to law, was examined by
9 counsel.

10 I further certify that the examination
11 was recorded stenographically by me and this
12 transcript is a true record of the proceedings.

13 I further certify that I am not of
14 counsel to any of the parties, nor in any way
15 interested in the outcome of this action.

16 As witness my hand and notarial seal
17 this 19th day of December, 2023.

18 

19 Louisa B. McIntire-Brooks

Notary Public

20 My Commission Expires:

21 November 13, 2027

[& - accurate]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted

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